STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

EASTSIDE TEACHERS ASSOCIATION, Charging Party, v. EASTSIDE UNION SCHOOL DISTRICT, Respondent.	)	Case No. LA-CE-1821 PERB Decision No. 466 December 19, 1984

Appearances: Charles R. Gustafson, Attorney, for Eastside Teachers Asssociation; Wagner, Sisneros & Wagner, by John J. Wagner, Attorney, for Eastside Union School District.

Before Hesse, Chairperson; Tovar and Jaeger, Members.

DECISION

JAEGER, Member: The Eastside Teachers Association (ETA) appeals the dismissal of its unfair practice charge which alleges that:

1. Three teachers informed the Eastside Union School District that they would not be returning to the school the following September for the 1983-84 semester.

2. They had worked as full-time teachers in the District during the entire 1982-83 school year.

3. The negotiated agreement between ETA and the District required the District to pay $2,898.30 towards the employees' insurance benefits for the period October 1, 1982 to September 30, 1983.

4. The District paid only $2173.73 toward the premiums for each of the three teachers and in May 1983[1] informed them that its payments would be discontinued as of June 30, 1983 and that the teachers could continue their coverage for July, August and September by paying the full premium.

5. On or about June 1, ETA met with the District superintendent, asserting that the teachers were full-time teachers for the 1982-83 year and, according to the contract, were entitled to a full-year's premium from the District. ETA indicated it was prepared to file a grievance over the matter unless the District preferred to try to reach settlement informally. The District indicated that it preferred to try to settle the matter informally before a grievance was filed.

6. On June 20, a meeting was held between the District and ETA at which the District announced it would not continue the premiums for July, August and September. ETA requested the specific grievance form required by the contract and was told the District had none but would accept the grievance on any form.

7. On July 15, ETA's further effort to achieve voluntary settlement proved futile and a grievance was filed. The District refused to accept the grievance because it was not properly written. A revised grievance was then submitted.

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[1]The Board agent cited June 20 as the date of this notification.

8. On July 18, the District notified ETA that it was denying the grievance as untimely and because, according to the contract, the teachers were not employees of the District.

9. ETA checked with the insurance carrier and determined that the District had paid full premiums for all teachers except the three subjects of the charge.

DISCUSSION

A PERB Board agent investigated the charge, ultimately dismissing it on the grounds that the District had a past practice of discontinuing premiums for teachers who were not returning for the following school year,[2] and that the teachers had been notified of the premium discontinuance by June 20 and had not filed a grievance by July 15, the end of the 15-day filing period required by the contract.

Based on these alleged facts, the Board agent concluded that the charge did not state a prima facie violation of the Educational Employment Relations Act (EERA).[3]

Although the Board agent had found the foregoing sufficient to warrant dismissal of the charge, she included in her notice of dismissal other reasons to support her decision. She cited Education Code section 37200, which provides that the last day

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[2]The Board agent was informed of this alleged past practice by the District during her investigation of the charge.

[3]Codified at Government Code section 3540, et seq.

of the school year is June 30, and section 44930, which provides that the effective date of certificated employee resignations shall be no later than the close of the school year during which the resignation has been received by the school board. She then decided that the teachers were not employees during the months of July, August and September. She also concluded that ETA's asserted unawareness of the long-standing District practice of discontinuing premiums was insufficient to establish an unlawful change of policy.[4]

ETA contends that the three teachers were at all pertinent times employees within the meaning of the contract as demonstrated by the District's policy of continuing benefits for retirees, that the contract provides that accrual of benefit rights is based on the preceding year's service, and that the contract provision defining "insurance year" controls rather than the Education Code provisions cited by the Board agent. Specifically, ETA argues that the District's past practice was to extend coverage through September following the end of the preceding school period and that the contract memorialized that practice by providing that the District's obligation was to pay

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[4]ETA objects to the Board agent's failure to have the parties confront each other with their versions of the facts, and claims it was kept particularly in the dark concerning the District's statements. It asserts that the Board agent could not understand the difficult and unique factual situation without such bilateral explanation.

a total contribution of $2898.30 annually for the insurance period of October 1 to September 30 of any year. (ETA's emphasis.)

ETA further argues that teachers retiring in September have performed the necessary annual service defined in the contract on which the accrual of benefits is based, and that ending the coverage year on September 30 was to permit the succeeding annual policy to begin at a time when the identity of the covered employees can be determined.

ETA's argument continues: if the District had a past practice of discontinuing premiums as of June 30, it was secret and in violation of the contract. The statute of limitations does not bar an action where the party has neither actual nor constructive knowledge of the unfair practice, nor where the unlawful practice is a continuing one. For the same reasons, failure to protest past violations does not constitute a waiver. Further, the grievance was not untimely. It was the District's partial payment of July 5, not the earlier threat to discontinue full payment, that started the grievance filing time, and the District influenced the timing of the filing by not having the proper form available and by requesting that the grievance be deferred pending efforts at informal resolution.

Finally, returning to the matter of the teachers' status, ETA contends that they were certainly employees at the time the grievance arose.

It is not necessary to evaluate each of ETA's arguments. The single question before the Board is whether the charge alleges facts which, if true, constitute evidence of a violation of EERA section 3543.5(c). San Juan Unified School District (3/31/82) PERB Decision No. 204.

Board Regulation 32620(a)(4) authorizes Board agents to investigate charges to determine if an unfair practice has been committed. But when read in the context of the entire section, and in conjunction with Regulation 32640, it is clear that it was not the Board's intention to empower agents to rule on the ultimate merits of a charge.[5] Rather, the Regulations were

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[5]Board Regulations are codified at California Administrative Code, title 8, section 31001 et seq. Regulation 32620 reads:

> (a) When a charge is filed, it shall be assigned to a Board agent for processing.
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> (b) The powers and duties of such Board agent shall be to:
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> > (1) Assist the charging party to state in proper form the information required by Section 32615;
> >
> > (2) Answer procedural questions of each party regarding the processing of the case;
> >
> > (3) Facilitate communication and the exchange of information between the parties;
> >
> > (4) Make inquiries and review the charge and any accompanying materials

designed to permit a determination that the facts as alleged in the charge state a legal cause of action and that the charging party is capable of providing admissible evidence in support of the allegations. Consequently, where the investigation results in receipt of conflicting allegations of fact or contrary theories of law, fair proceedings, if not due process, demand that a complaint be issued and the matter be sent to formal hearing.

> to determine whether an unfair practice has been, or is being, committed, and determine whether the charge is subject to deferral to arbitration, or to dismissal for lack of timeliness.
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> > (5) Dismiss the charge or any part thereof as provided in Section 32630 if it is determined that the charge or the evidence is insufficient to establish a prima facie case; or if it is determined that a complaint may not be issued in light of Government Code sections 3514.5, 3541.5 or 3563.2 or because a dispute arising under HEERA is subject to final and binding arbitration.
> >
> > (6) Issue a complaint pursuant to Section 32640.
>
> (c) The respondent shall be apprised of the allegations, and may state its position on the charge during the course of the inquiries.

Regulation 32640 reads:

> (a) The Board agent shall issue a complaint if the charge or the evidence is sufficient to establish a prima facie case. . . .

Here, the Board agent made no determination that ETA would be unable to produce testimonial or documentary evidence in support of its charge. Nor did she conclude that, even if true, the facts did not describe an unfair practice. Rather, she accepted Respondent's ex parte statements as to its claimed past practice as conclusive, looked to the Education Code to find in the parties' agreement a meaning quite different from that asserted by ETA, and found fatal ETA's failure to grieve within 15 days of the District's action.

~~As to the latter matter, the charge is that the District~~ violated EERA by unilaterally changing the contractual obligation to continue premium payments through September. Therefore, the six-month limitation on filing unfair practice charges found in section 3541.5 is applicable in this case. As for the other grounds for the dismissal, it is clear that the Board agent ultimately decided the merits of the dispute as she perceived them to be.[6]

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[6]The Board agent was uncertain whether the charge alleges bad faith by the District in its responses to ETA's effort to file a grievance, but found that the "late filing" made it unnecessary to decide. We note that if the charge includes this matter, it may be interpreted as an allegation that the District violated the grievance procedure thereby denying the employees and ETA their respective statutory rights. Questions are then raised as to the applicability of the doctrine of equitable tolling, the right of an employer to refuse to receive a grievance which it considers to be "written improperly," and the possibility of a waiver of time limits by the District's failure to have proper forms available and its request that a formal filing be deferred in the interest of informal discussion.

There remains the question of whether the charge is sufficient to warrant the issuance of a complaint. We find it to be so. The negotiated agreement requires the District to pay up to $2898.30 annually for the insurance period of October 1 to September 30 of any year for each eligible employee.[7] Eligible employees are defined as full-time employees and those who serve less than full time, but half time or more.

Article III of the contract defines the service year as 180 days for any school year within the term of the contract. The charge alleges that the subject teachers each completed 180 days of full-time service during the period of September 1982 to June 1983. These dates fall within the

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[7]To interpret the words "up to $2898.30" as endowing the District with the discretion to pay less than that amount for full-time employees who have met the service requirements is to give no thought to the context in which those words appear and to place the judicial robe between oneself and commonplace knowledge. The contract provides for pro-rated premium benefits for part-timers, and requires those employees to contribute percentages of the employer's contribution based on the proportion of part-time service performed. Thus the District's contribution would vary accordingly but never exceed the $2898.30 maximum. Further, in view of virtually universal practice, one need not depend upon expert testimony to recognize that employers' premium obligations are invariably maximized at a stated figure for a given period of time. This protects the employer from any obligation to assume unexpected premium increases which might occur during that period. It also accommodates the wishes of employees who opt for an insurance program bearing premiums higher than those of the program which served as the basis of the employer's willingness to accept financial liability.

boundaries of the contract term. The contract further provides that full-time employees who meet the service year requirements "shall have the District's financial contribution paid in full."

Nowhere in the agreement is there an express provision which limits the District's obligation toward an employee who has met the service year requirements but who will not return to the school for the following year. Nowhere in the agreement is there a definition of "employee" which, on its face, limits the District's premium obligation as to the employees here. Whether the contract can be so interpreted, or whether other evidence exists which would establish the District's right to curtail its premium contributions, are matters of affirmative defense which the District is clearly entitled to present and which ETA is equally clearly entitled to attempt to refute. But the place for either to be done is the hearing room.

We find that the charge alleges facts which, if true, constitute prima facie evidence that the District unlawfully altered a negotiated policy concerning insurance benefits for a certain category of full-time teachers and, by that action, violated its duty to negotiate in good faith as required by section 3543.5(c) of the EERA.[8]

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[8]See Grant Joint Union High School District (2/26/82) PERB Decision No. 196.

ORDER

Based on the record, the Public Employment Relations Board ORDERS that the dismissal of the unfair practice charge filed by the Eastside Teachers Association against the Eastside Union School District is REVERSED and further ORDERS that the matter be remanded to the General Counsel for issuance of a complaint and appropriate further proceedings.

Member Tovar joined in this Decision.

Chairperson Hesse's dissent begins on page 12.

Hesse, Chairperson, dissenting: The majority decision, at footnote 7, attempts to explain the contract language "up to $2898.30 annually" as nothing more than a pro-rata option for the employer when an employee works less than the full school year. While interesting, this interpretation is nothing more than just that -- an "interpretation" by the majority of what it believes the contract may have meant.

In truth, the plain meaning of the collective bargaining agreement obligates the employer to pay premiums only for employees. As charging parties had resigned, they were no longer employees after June 30, 1983. Thus, the District was under no obligation to pay premiums for these three teachers after that date. Had the parties wanted to obligate the employer to pay benefits beyond the date of employment, they could have negotiated such language. As they did not, and as I find no ambiguity in the contract that needs to be resolved by a hearing, I respectfully dissent from my colleagues' decision to issue a complaint on this charge of a unilateral change in the terms and conditions of employment.

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

HEALDSBURG AREA TEACHERS ASSOCIATION, CTA/NEA,	)	
Charging Party,	)	Case No. SF-CE-869
v.	)	PERB Decision No. 467
HEALDSBURG UNION HIGH SCHOOL DISTRICT,	)	December 20, 1984
Respondent.	)	

Appearances: George A. Cassell for Healdsburg Area Teachers Association, CTA/NEA; Robert J. Henry, Attorney for Healdsburg Union High School District.

Before Jaeger, Morgenstern and Burt, Members.

DECISION

MORGENSTERN, Member: The Healdsburg Area Teachers Association, CTA/NEA (Association or CTA), appeals the attached dismissal issued by a regional attorney of the Public Employment Relations Board (Board). In its unfair practice charge, the Association alleged that the Healdsburg Union High School District (District) violated section 3543.5(a), (b), (c) and (e) of the Educational Employment Relations Act (EERA)[1] by transferring the duties of the Chapter I coordinator from a certificated to a classified employee.

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

DISCUSSION

In reaching his conclusion that the charge was untimely,[2] the regional attorney found the allegations to reveal that, as of June 8, 1983, the Association had been informed of the District's intent to transfer the work to the classified unit and had taken steps to implement that decision. In contrast, it is the Association's position that the date of implementation of transfer, September 1, 1983, is the date the District committed the alleged unfair practice and, therefore, the charge is timely.

We are in agreement with the regional attorney's conclusion based on the following assessment of the facts. As early as February 23, 1983, nearly one year before the charge was filed, the District announced its intention to transfer the Chapter I coordinator assignment and offered CTA the opportunity only to negotiate the effects of that decision. The board's resolution of March 8th went forward with that course of action and directed that the incumbent be released from the position as of June 30, 1983. Subsequent conduct by the District did nothing to dispel the notion that the decision to transfer was going forward. During the June 10, 1983 negotiating session, the District's position remained that only the ramifications of the decision were negotiable.

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[2]EERA section 3541.5 precludes the issuance of a complaint based on an alleged unfair practice occurring more than six months prior to the filing of the charge.

In sum, the District indicated its intent to unilaterally transfer the Chapter I coordinator duties by issuance of its resolution of March 8, 1983, and clearly advised CTA of its intention not to pursue the matter via a unit determination proceeding at the bargaining session of June 10, 1983. The events which followed do not suggest that the District was reconsidering its decision. Therefore, the unilateral change occurred on June 30, 1983, when the incumbent was relieved of the Chapter I coordinator's duties. Since the unfair practice charge was filed on January 30, 1984, the Board can only look to those events which occurred after July 30, 1983. Within that period, no unfair practice appears in the allegations.

In affirming the dismissal of the charge, we necessarily reject the unit modification theory put forward by our dissenting colleague. The artfully drafted opinion might well have attracted additional supporters had it been based on the facts as they exist in the instant case.

ORDER

Based on the foregoing, the unfair practice charge in Case No. SF-CE-869 is DISMISSED WITHOUT LEAVE TO AMEND.

Member Burt joined in this Decision. Member Jaeger's dissent begins on page 4.

Member Jaeger, dissenting: I would find that not only was the charge in this case timely filed, but that it states a prima facie violation of the Act and should proceed to a hearing on the merits.

The majority finds that the unilateral change in this case occurred on June 30, 1983, when the incumbent was removed from the Title I Coordinator position. I find that the employer's unlawful act may be dated from September 1, 1983, the first day that the District removed the classification of Title I Coordinator from the certificated unit and effectively denied the Association the right to represent the employee occupying that position.

Since my view with respect to the timeliness of the charge is dependent upon my reading of the facts alleged in the charge, it is necessary to set forth a brief factual summary.

Factual Summary

On February 23, 1983, Assistant Superintendent Lawrence A. Machi sent a letter to the Association negotiator, Mark Giampaoli, stating that the District wanted to negotiate the "transfer of service out of the bargaining unit of Chapter I supervision . . . ."

On March 4, 1983, the District and the Association discussed the issue, but failed to reach agreement.

On March 8, 1983, the District's governing board passed a

formal resolution releasing Gordon Langford from his current administrative position of Title I Coordinator.[1]

On March 22 and, subsequently, on April 1, 1983, the parties negotiated about the issue but failed to reach agreement.

During the April 1 negotiating session, the District proposed that the "Chapter I Coordinator duties be assumed by a management classified employee."

In these bargaining sessions, the Association took the firm position that the Title I Coordinator classification belonged in the certificated unit.

On June 8, 1983, Association negotiator Mark Allen wrote a letter to Assistant Superintendent Machi. That letter states, in pertinent part:

> It is my understanding that the issue of Title I Coordinator has not been resolved. As I recall, the District approached the teachers' negotiating team with a proposal for a unit modification removing the Title I Coordinator from our representation. After several negotiation sessions, neither side could come to an agreement as to where the responsibilities of the Coordinator's job lie, either in the administrative or certificated domain. An agreement was reached that the District would pursue this matter through the legal channels by petitioning PERB for a unit modification. In such an action both parties would be able to present their cases before an impartial body.
>
> It has now come to my attention that at a recent meeting Barbara McConnell, a

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[1]In the exhibits attached to the charge and in the charge itself the Association and the District use "Title I Coordinator" and "Chapter I Coordinator" interchangeably.

> classified employee, was appointed to replace Gordon Langford, a certificated employee as the Title I Coordinator.
>
> Because the District circumvented the procedures required to make a unit modification and took unilateral action on a matter which had reached impasse at the bargaining table, this act has to be viewed as illegal. . . .

On June 10, 1983, the parties again met to negotiate. The District informed the Association that, contrary to its earlier agreement, it was not required to petition PERB for a unit modification because "the Board of Education had declared the Title I Coordinator position a management position."

At a negotiating session which occurred on August 12, the District refused to reconsider its decision and informed the Association that the matter was left in its hands ". . . to take whatever action is appropriate."

On September 1, 1983, Barbara McConnell, an employee not in the certificated unit, filled the position of Title I Coordinator.

On January 30, the instant unfair practice charge was filed.

Discussion

There is a very significant issue presented by this charge which the majority decision sees fit to ignore.

This Board has long held that, prior to making a determination that it will transfer work out of the bargaining unit, an employer must offer the exclusive representative notice and an opportunity to negotiate. Rialto Unified School

District (4/30/82) PERB Decision No. 209; Solano County Community College District (6/30/82) PERB Decision No. 219; Alum Rock Union Elementary School District (6/27/83) PERB Decision No. 322; Goleta Union School District (8/1/84) PERB Decision No. 391.

However, the decision to transfer work or duties out of a bargaining unit is to be distinguished from an attempt to remove an entire classification or position from a bargaining unit because management no longer feels the position is appropriately placed in the unit. Such an action constitutes an attempt to alter the configuration of a bargaining unit. The National Labor Relations Board (NLRB) and the federal courts, in interpreting the National Labor Relations Act (29 U.S.C. 151 et seq.), have long held that the configuration of a unit is a permissive subject of bargaining. That is, while the parties may negotiate over a unit description, it is unlawful for one party to insist to the point of impasse that the unit configuration be modified. Morris, The Developing Labor Law, 2d ed., Chapter 18; Shell Oil Co. (1972) 194 NLRB 988; Electrical Workers (Steinmetz Electrical Contractors Assn., Inc.) (1978) 234 NLRB 633; Salt Valley Water Users' Assn. (1973) 204 NLRB 83 [83 LRRM 1536] enf'd 498 F.2d 394 [86 LRRM 2873]; Canterbury Gardens (1978) 238 NLRB 864 [99 LRRM 1279]; Preterm, Inc. (1979) 240 NLRB 654; A-1 Fire Protection, Inc. (1980) 250 NLRB 217.

I agree with the NLRB and the federal courts that the configuration of a unit is not a mandatory subject of bargaining. Even where the parties negotiate about the issue through completion of the impasse procedure, it would potentially undermine the Board's unit modification procedure[2]

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[2]PERB Regulation 32781 provides, in relevant part:

> (b) A recognized or certified employee organization, an employer, or both jointly may file with the regional office a petition for change in unit determination:
>
> > (1) To delete classifications or positions no longer in existence or which by virtue of changes in circumstances are no longer appropriate to the established unit;
> >
> > (2) To update classification titles where the duties are not changed sufficiently to cause deletion from the established unit;
> >
> > (3) To make technical changes to clarify the unit description;
> >
> > (4) To clarify the unit where the creation of a new classification or position has created a dispute as to whether the new classification or position is or is not included in the existing unit.
> >
> > (5) To delete classification(s) or position(s) not subject to (1) above which are not appropriate to the unit because said classification(s) or position(s) are management, supervisory or confidential, provided that:
> >
> > > (A) The petition is filed jointly by the employer and the recognized

if management were to unilaterally implement a change in a unit description which conflicts with established Board precedent delineating the statutory terms "managerial," "supervisory," or "confidential" employee. See EERA sections 3540.1(d), (g), (m); Lompoc Unified School District (3/17/77) EERB Decision No. 13; Campbell Union High School District (8/17/78) PERB Decision No. 66; Franklin-McKinley School District (10/26/79) PERB

> or certified employee organization, or
>
> (B) There is not in effect a lawful written agreement or memorandum of understanding, or
>
> (C) The petition is filed during the "window period" of a lawful written agreement or memorandum of understanding as defined in these regulations in Section 33020 for EERA . . . .
>
> (c) All affected recognized or certified employee organizations may jointly file with the regional office a petition to transfer classifications or positions from one represented established unit to another.
>
> (d) A petition to add classifications or positions to an established unit, transfer classifications from one established unit to another, consolidate two or more established units or divide an existing unit into two or more appropriate units shall be dismissed if filed less than 12 months following certification of the results of a representation election covering any employees proposed to be added or affected by the petition to transfer, consolidate or divide.

Decision No. 108; Oakland Unified School District (11/25/81) PERB Decision No. 182.

In this case, the charge alleges that the position of Title I Coordinator was previously held by members of the certificated unit and that management undertook to remove the classification from the bargaining unit. Indeed, there is even an allegation that the District considered the position to be "managerial." Thus, I would view the charge as properly alleging that the District was attempting to modify the unit description.[3] While the Association could, if it so desired, negotiate concerning the proposed change, it was not obligated to do so and management could not insist that the parties bargain to the point of impasse concerning the issue.

Having so found, I have no difficulty determining that the charge was timely filed. Since the Association was not required to negotiate with the District and the District could

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[3]Article 2.1 of the parties 1981-83 collective bargaining agreement provides that

> [t]he Board recognizes the Association as the exclusive representative of all certificated employees of the Board--excluding management, confidential, and supervisory employees, adult education, and substitute teachers as defined in the Act, for the purpose of meeting and negotiating.

Although the agreement was not attached to the charge, the Board may nevertheless take administrative notice of its existence.

not effectuate the change unilaterally without first seeking to modify the unit through the unit modification procedure, I would date the alleged violation as occurring when the District, by filling the position on September 1 with a noncertificated employee, denied the Association the right to represent the employee occupying the Title I Coordinator classification.

STATE OF CALIFORNIA GEORGE DEUKMEJIAN, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD
San Francisco Regional Office
177 Post Street, 9th Floor
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March 5, 1984

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California Teachers Assn.
1705 Murchison Drive
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Schools Legal Counsel
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Re: REFUSAL TO ISSUE COMPLAINT AND DISMISSAL OF UNFAIR PRACTICE CHARGE
Healdsburg Area Teachers Association, CTA/NEA v. Healdsburg Union High School District, Charge No. SF-CE-869

Dear Parties:

Pursuant to Public Employment Relations Board (PERB) Regulation section 32620(5), a complaint will not be issued in the above-referenced case and the pending charge is hereby dismissed because it fails to allege facts sufficient to state a prima facie violation of the Educational Employment Relations Act (EERA).[1] The reasoning which underlies this decision follows.

On January 30, 1984, the Healdsburg Area Teachers Association, CTA/NEA (Association) filed an unfair practice charge against the Healdsburg Union High School District (District) alleging violation of EERA section 3543.5, subdivisions (a), (b), (c) and (e). Specifically, charging party alleged that the District transferred the duties of the Title I coordinator, a bargaining unit position, out of the unit prior to bargaining such change to impasse or agreement.

To state a prima facie violation, charging party must allege and ultimately establish that the alleged unfair practice either occurred or was discovered within the 6-month period immediately preceding the filing of the charge with PERB. EERA section 3541.5; San Dieguito Union High School District (2/25/82) PERB Decision No. 194.

On February 23, 1984, the regional attorney discussed with charging party's attorney the deficiency of the above-referenced charge. It was pointed out

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[1]References to the EERA are to Government Code sections 3540 et seq. PERB Regulations are codified at California Administrative Code, Title 8.

that charging party has failed to state a prima facie violation of the above-cited EERA sections because the unfair practice charge was filed (January 30, 1984), more than six months subsequent to the date on which charging party first learned of the violation. The unfair practice charge, on its face, reveals that as of June 8, 1983 the Association had been informed that the District intended, and had taken steps to implement its decision, to transfer the duties of Title I Coordinator from Gordon Langford, a member of the certificated unit, to Barbara McConnell, a member of the classified unit.[2] Further, as of that date, that the District had made clear its intention to undertake this transfer unilaterally, prior to reaching impasse or agreement with the Association, and that it would not resort to PERB's unit modification procedures as a means of removing the position from the unit. (See inter alia, paragraphs 9 and 10, as well as Exhibits "A" and "C".)

The Association, according to the allegations in Paragraph 19, threatened on June 10, 1983 to file an unfair practice charge with PERB if the District unilaterally implemented the change. Yet, the Association waited more than seven months before filing such charge. Accordingly, the allegations of the charge are dismissed and no complaint will issue.

Pursuant to Public Employment Relations Board regulation section 32635 (California Administrative Code, title 8, part III), you may appeal the refusal to issue a complaint (dismissal) to the Board itself.

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[2]On June 8, 1983, Mark Allen, president of the Association, wrote to Larry Machi, representative of the District (see Exhibit G, attached to charge), stating:

> It has now come to my attention that at a recent meeting Barbara McConnell, a classified employee, was appointed to replace Gorden Langford, a certificated employee, as Title I Coordinator.
>
> Because the district circumvented the procedures required to make a unit modification and took unilateral action in a matter which had [sic] reached impasse at the bargaining table, this act has to be viewed as illegal.

Right to Appeal

You may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this Notice (section 32635(a)). To be timely filed, the original and five (5) copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) on March 26, 1984, or sent by telegraph or certified United States mail postmarked not later than March 26, 1984 (section 32135). The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five (5) copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal (section 32635(b)).

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany the document filed with the Board itself (see section 32140 for the required contents and a sample form). The document will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

Extension of Time

A request for an extension of time in which to file a document with the Board itself must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each party regarding the extension, and shall be accompanied by proof of service of the request upon each party (section 32132).

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Very truly yours,

DENNIS M. SULLIVAN
General Counsel

By _____
PETER HABERFELD
Regional Attorney

cc: General Counsel