STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS CLOVIS CHAPTER #250,	)	
Charging Party,	)	Case No. S-CE-943
v.	)	PERB Decision No. 597
CLOVIS UNIFIED SCHOOL DISTRICT,	)	December 19, 1986
Respondent.	)	

Appearances: Maureen C. Whelan, Attorney for California School Employees Association and its Clovis Chapter #250; Finkle & Stroup by Stephen Thomas Davenport, Jr., Attorney for Clovis Unified School District.

Before Hesse, Chairperson; Morgenstern and Craib, Members.

DECISION

HESSE, Chairperson: The California School Employees Association and its Clovis Chapter #250 (CSEA) appeals the attached partial dismissal of its charge that the Clovis Unified School District (District) violated sections 3543.5(a), (b) and (c) and 3543.1(a)[1] of the Educational Employment Relations Act (EERA or Act). The charge alleged that the

[1]Section 3543.5 provides, in pertinent part:

> 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

District failed to comply with a settlement agreement reached in an earlier unfair practice case. The regional attorney-dismissed the instant charge on the grounds that EERA section 3541.5(b)[2] prohibits the Public Employment Relations Board (PERB or Board) from enforcing contractual agreements between parties. (See Baldwin Park Unified School District (1979) PERB Decision No. 92.) This proscription has been read to include settlement agreements. (Regents of the University of

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> 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.

Section 3543.1(a) provides:

> (a) Employee organizations shall have the right to represent their members in their employment relations with public school employers, except that once an employee organization is recognized or certified as the exclusive representative of an appropriate unit pursuant to Section 3544.1 or 3544.7, respectively, only that employee organization may represent that unit in their employment relations with the public school employer. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership.

2section 3541.5(b) provides:

> The board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of such an agreement that would not also constitute an unfair practice under this chapter.

California (1983) PERB Decision No. 362-H.) In the Regents case, the Board affirmed the dismissal of a charge alleging that a violation of a settlement agreement was an independent violation of the Higher Education Employer-Employee Relations Act (HEERA). Since the statutory language in HEERA mirrors that in EERA, the regional attorney was correct in his dismissal of the charge that a violation of a settlement agreement is a concurrent violation of EERA.

The Board has held that the breach of an agreement constitutes an independent violation of the Act only where the breach amounts to a change in policy having a generalized effect or continuing impact upon the terms and conditions of employment of bargaining unit members. (Grant Joint Union High School District (1982) PERB Decision No. 196.) Here, CSEA merely alleges that the settlement agreement has not been complied with. There is no allegation that this dispute, which involves only the proper amounts to be paid, under the agreement, reflects a change in policy.

Further, we note that precedent of the National Labor Relations Board (NLRB) in this situation is not instructive. First, specific regulatory authority gives the NLRB the ability to revive[2] a charge or to enforce settlement agreements.[3]

[2]We note that CSEA did not request that the original unfair practice charge be revived on the theory that a condition subsequent (the settlement terms) had not been complied with.

[3]See NLRB Regulation section 101.9(e)(2).

No such regulations govern PERB. Second, the NLRB, unlike PERB, is a party to unfair labor practice complaints and thus must be a party to a settlement, since, unlike our adjudicative role, the NLRB plays a prosecutorial role in unfair practice proceedings.

Thus, CSEA must look to the courts for a remedy to its allegation that the District did not comply with the settlement agreement.

ORDER

The Board hereby AFFIRMS the dismissal in Case No. S-CE-943.

Members Morgenstern and Craib joined in this Decision.

STATE OF CALIFORNIA GEORGE DEUKMEJIAN. Governor

PUBLIC EMPLOYMENT RELATIONS BOARD
SACRAMENTO REGIONAL OFFICE
1031 18TH STREET, SUITE 102
SACRAMENTO. CALIFORNIA 95814
(916) 322-3198

December 18. 1985

Brian Gorman
Field Representative
California School Employees Association
1490 West Shaw. Suite A
Fresno. CA 93711

Re: California School Employees Association and its Clovis Chapter No. 250 v. Clovis Unified School District
Unfair Practice Charge No. S-CE-943

Dear Mr. Gorman:

The above-referenced charge alleges that the Clovis Unified School District (District) has repudiated a settlement agreement reached with the California School Employees Association and its Clovis Chapter No. 250 (Association) and refused to provide necessary and relevant information to the Association. This conduct is alleged to violate sections 3543.5(a). (b) and (c) of the Educational Employment Relations Act (EERA).

I indicated to you in my letter dated December 6, 1985 that certain allegations contained in the above-referenced charge did not state a prima facie case, and that unless you amended these allegations to state a prima facie case, or withdrew them prior to December 13, 1985, they would be dismissed. More specifically. I informed you that if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge accordingly.

I have not received either a request for withdrawal or an amended charge and am therefore dismissing those allegations which fail to state a prima facie case based on the facts and reasons contained in my December 6 letter which is attached as Exhibit 1.

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.

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 dismissal (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 January 7. 1986. or sent by telegraph or certified United States mail postmarked not later than January 7, 1986 (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 each copy of a document served upon a party or 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 other 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
Robert Thompson
Regional Attorney

STATE OF CALIFORNIA GEORGE DEUKMEJIAN. Governor

PUBLIC EMPLOYMENT RELATIONS BOARD
SACRAMENTO REGIONAL OFFICE
1031 18TH STREET. SUITE 102
SACRAMENTO. CALIFORNIA 95814
(916) 323-3198

December 6, 1985

Brian Gorman
Field Representative
California School Employees Association
1490 West Shaw. Suite A
Fresno. CA 93711

Re: California School Employees Association and its Clovis Chapter No. 250 v. Clovis Unified School District
Unfair Practice Charge No. S-CE-943

Dear Mr. Gorman:

The above-referenced charge alleges that the Clovis Unified School District (District) has repudiated a settlement agreement reached with the California School Employees Association and its Clovis Chapter No. 250 (Association) and refused to provide necessary and relevant information to the Association. This conduct is alleged to violate sections 3543.5(a). (b) and (c) of the Educational Employment Relations Act (EERA).

My investigation revealed the following facts. Charging Party has indicated that the District has provided the requested information and therefore is willing to withdraw that section of the charge. On April 18. 1985. the Association and the District reached agreement over matters raised by unfair practice charge No. S-CE-848. The agreement was reduced to writing and contained a provision whereby that charge was withdrawn with prejudice on April 25. 1985. Since that time the Association has met with the District concerning implementation of the settlement agreement, primarily the payment of money to individuals affected by a prior reduction in hours.

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[1]This section of the agreement reads:

> The District agrees to compensate bus drivers for any loss of wages suffered as a result of reductions in hour6 from the 1983-84 school year to the 1984-85 school year, for the months of September 1984 through January 24. 1985.

the District have been unable to reach agreement as to the correct dollar amount.

Based on the facts described above, the allegation that the District repudiated the settlement agreement contained in this charge fails to state a prima facie violation of the EERA for the reasons which follow.

Section 3541.5(b) of the EERA states:

> The board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of such an agreement that would not also constitute an unfair practice under this chapter.

The Public Employment Relations Board (PERB) has held that this requirement prohibits issuance of a complaint unless the facts in the charge state an independent violation of the EERA in addition to a possible violation of the agreement. Baldwin Park Unified School District (1979) PERB Decision No. 92. Although the District's failure to reach agreement with the Association over the correct amount of money to be proferred to employees may constitute a violation of the settlement agreement, there is no evidence which indicates that these fact6 give rise to an independent unfair practice. In order to 6tate an independent unfair practice, the Charging Party would have to show that the District made a change in policy by refusing to comply with the terms of the settlement agreement. Without such evidence EERA section 3541.5(b) proscribes issuance of a complaint in this case.

For these reasons, the allegation that the District repudiated a settlement agreement with the Association contained in charge number S-CE-943. as presently written, does not state a prima facie case. If you feel that there are any factual inaccuracies in this letter or any additional facts which would correct the deficiencies explained above, please amend the charge accordingly. The amended charge should be prepared on a standard PERB unfair practice charge form clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must be served on the respondent and the original proof of service must be filed with PERB. If I do

not receive an amended charge or withdrawal from you before December 13. 1985. I shall dismiss the above-described allegation from your charge. If you have any questions on how to proceed, please call me at (916) 322-3198.

Sincerely yours.

Robert Thompson
Regional Attorney

cc: Maureen Whelan

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