STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

JUDITH MAE GORCEY, Charging Party, v. OXNARD EDUCATORS ASSOCIATION, Respondent.	)	Case No. LA-CO-369 PERB Decision No. 664 May 5, 1988
JAN MARIE TRIPP, Charging Party, v. OXNARD EDUCATORS ASSOCIATION, Respondent.	)	Case No. LA-CO-370

Appearances; Rosenmund & Rosenmund by Michael A. Morrow for Jan Marie Tripp and Judith Mae Gorcey; Robert E. Lindquist, Attorney, for Oxnard Educators Association, CTA.

Before Hesse, Chairperson; Craib and Shank, Members.

DECISION

SHANK, Member: Jan Marie Tripp and Judith Mae Gorcey (hereafter Charging Parties) appeal the partial dismissals of the first amended unfair labor practice charges filed against the Oxnard Education Association (hereafter Respondent or Association).[1]

[1]Oxnard Educators Association (Tripp) LA-CO-370, and Oxnard Educators Association (Gorcey), LA-CO-369, have been consolidated by the Board for this decision.

Charging Parties filed individual charges with the Public Employment Relations Board (PERB or Board) on May 23, 1986, alleging that Respondent failed to bargain in good faith, as required by section 3543.6(c) of the Educational Employment Relations Act (EERA),[2] by bargaining for a salary schedule outside the scope of Government Code section 3543.2(d).[3]

2EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Government Code section 3543.6(c) provides as follows:

> It shall be unlawful for an employee organization to:
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> . . . . . .
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> (c) Refuse or fail to meet and negotiate in good faith with a public school employer of any of the employees of which it is the exclusive representative.

[3]Government Code section 3543.2 states in pertinent part:

> . . . . . .
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> (d) Notwithstanding Section 45028 of the Education Code, the public school employer and the exclusive representative shall, upon the request of either party, meet and negotiate regarding the payment of additional compensation based upon criteria other than years of training and years of experience. If the public school employer and the exclusive representative do not reach mutual agreement, then the provisions of Section 45028 of the Education Code shall apply.

The first amended charges, filed on July 10, 1986, further alleged that Respondent breached its duty of fair representation, pursuant to Government Code section 3544.9[4] by negotiating a collective bargaining agreement containing a salary schedule that did not comply with Education Code section 45028.

Charging Parties are certificated employees of the Oxnard School District (District) and members of the Association. Through the 1983-84 school year, the District used a 12-step certificated salary schedule which classified teachers on the basis of uniform allowance for years of training and years of experience consistent with Education Code section 45028.[5]

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[4]Government Code section 3544.9 states:

> The employee organization recognized or certified as the exclusive representative for the purpose of meeting and negotiating shall fairly represent each and every employee in the appropriate unit.

[5]Education Code section 45028 states in pertinent part:

> Effective July 1, 1970, each person employed by a district in a position requiring certification qualifications except a person employed in a position requiring administrative or supervisory credentials, shall be classified on the salary schedule on the basis of uniform allowance for years of training and years of experience. Employees shall not be placed in different classifications on the schedule, nor paid different salaries, solely on the basis of the respective grade levels in which such employees serve.

Each step directly corresponded to the number of District-accepted years of teaching experience.

For the 1984-85 school year, the District and the Association negotiated a 10-step salary schedule which consolidated the lowest three salary steps into a single step. Thus, all teachers with one, two or three years' experience were placed on step one and paid for three years' experience. Teachers with four years' experience were placed on step two, those with five years' experience on step three, etc.

After ratification of the 10-step salary schedule, unit employees became aware that new teachers hired into the District were being placed at the salary step corresponding to their actual years of experience as if the 12-step salary schedule were still in place. For example, new hires with three years of experience were being placed on the new salary schedule at step three while incumbent employees with three years of District experience were at salary step one. In response to complaints by incumbent employees, the Association and District negotiated a new salary schedule for 1985-86 providing for a reinstatement of the 12-step salary schedule and an across-the-board pay increase of 4.2 percent.

This newest salary schedule further provided that incumbent teachers (i.e., those not newly hired in 1984-85) on steps one through five and step ten were advanced three steps retroactive to September 1985, which translates into a 12.6-percent pay increase. Incumbent teachers on steps six through nine and all

newly hired teachers received a single step increase and a 4.2 percent pay raise. Incumbent teachers on steps six through nine were scheduled to be advanced two additional steps effective the 1986-87 school year; however the advancement was not retroactive.

Charging Party Judith Mae Gorcey was personally affected by the salary schedules as follows: In 1983-84 she was on step nine with nine years' experience; in 1984-85 she was on step eight with ten years' experience; and in 1985-86 she was on step nine with eleven years' experience. Gorcey alleges she lost $2,685.00 in compensation because she received a one-step rather than a three-step increase.

Charging Party Jan Marie Tripp was personally affected by the salary schedules as follows: In 1983-84 she was on step six with six years' experience; in 1984-85 she was on step five with seven years' experience; and in 1985-86 she was on step six with eight years' experience. In 1985-86, other teachers with less experience were currently on steps six and seven receiving equal or greater pay than Charging Party. Tripp alleges she lost $2,132.00 in compensation because she received a one-step rather than a three-step increase.

Charging Parties allege that the 1985-86 salary schedule is illegal and violates Education Code section 45028 by classifying teachers for salary purposes on a basis other than years of training and years of experience. The regional

attorney concluded that PERB has jurisdiction to decide the instant dispute insofar as it relates to violations of the Educational Employment Relations Act but does not have jurisdiction to remedy Education Code violations. The regional attorney held that the charge did not ask PERB to remedy an Education Code violation and accordingly only addressed the unfair labor practice charges.

Based upon her conclusion that the negotiations regarding salary schedules between the Association and the District fell within the scope of bargaining as determined by Government Code section 3543.2(d), the Regional Attorney dismissed the 3543.6(c) and 3544.9 allegations. Section 3543.2(d) provides an exception to Education Code section 45028 when negotiations are based on criteria other than years of training and years of experience. She further concluded that Charging Parties failed to allege sufficient facts in support of the 3543.6(c) and 3544.9 allegations to constitute a prima facie case.

On appeal, Charging Parties reassert their contention that the 1985-86 salary schedule agreed to by the District and Respondent violates Education Code section 45028. They further contend that section 3543.2(d) does not allow unrestricted negotiations in violation of the uniformity requirement mandated by section 45028. Charging Parties believe that a complaint should issue for: 1) failure to bargain in good faith (3543.6(c)) and 2) breach of the duty of fair representation (3544.9).

In opposition to the appeal, Respondent argues that PERB lacks jurisdiction over the subject matter of the charge, which specifically alleges a violation of the Education Code. Respondent agrees with the regional attorney's conclusion that Charging Parties have failed to set forth facts sufficient to state a prima facie case with regard to the alleged violations of sections 3543.6(c) and 3544.9, respectively.

DISCUSSION

This case raises three separate issues before the Board. Charging Parties have alleged two violations of EERA and a violation of the Education Code.

A. Jurisdiction

The regional attorney correctly found that PERB does not have jurisdiction to enforce contracts between parties or to enforce the Education Code. Government Code section 3541.5(b); California School Employees Association v. Azusa Unified School District (1984) 152 Cal.App.3d 580; 199 Cal.Rptr. 635; California School Employees Association v. Travis Unified School District (1984) 156 Cal.App.3d 242, 202 Cal.Rptr. 699. Where only a violation of a mandatory Education Code provision is alleged, the normal jurisdiction is in the trial court. Wygant v. Victor Valley Joint Union High School District (1985) 168 Cal.App.3d 319; 214 Cal.Rptr. 205; Marshall v. Russo 87 Daily Journal D.A.R. 10094.

Contrary, however to the regional attorney's finding that this case does not ask PERB to remedy an Education Code violation, we find that Charging Parties have alleged that the salary schedule violates Education Code section 45028. Charging Parties seek immediate reclassification and retroactive payment of all teachers in accordance with the uniformity requirement of section 45028. As this Board has no jurisdiction to remedy a violation of the Education Code, to the extent that the charge seeks such a remedy this is a matter to be resolved by the courts. Travis Unified School District, supra.

B. Good Faith Negotiations

We agree with the Board agent's dismissal of the 3543.6(c) allegation. We disagree, however, with her reasoning. The Board agent dismissed the allegation after independently determining that the salary schedule as agreed to by the District and the Association, was negotiable pursuant to Government Code section 3543.2(d), citing Healdsburg Union High School District (1984) PERB Decision No. 375.

We dismiss the 3543.6(c) allegation on the grounds that Charging Parties lack standing to bring charges against the Association for failure to negotiate with the District. Berkeley Federation of Teachers, Local 1078, AFL-CIO (1988) PERB Decision No. 658.

The purpose of this agency is to insure the statutory rights of the parties, so that the employer and the exclusive representative may meet and negotiate on terms and conditions of employment as defined in EERA. The Board has recognized that the exclusivity of the chosen employee organization in representing unit employees is crucial to its ability to negotiate effectively and to stable employment relations generally. Hanford Joint Union High School District (1978) PERB Decision No. 58. While Hanford is factually distinguishable in that it involves a nonexclusive representative as opposed to an individual unit employee, the harm sought to be prevented is the same, to wit: to insure that the role of the exclusive representative in representing unit employees in negotiations of terms and conditions of employment with the employer is not undermined.

We note that Charging Parties in this case are not participants to the negotiations at issue. A charge of a refusal by the exclusive representative to bargain in good faith must be brought by the employer, and cannot be brought by an individual employee since the Association's duty to bargain is owed to the employer, not to the individual unit employee. Charging Parties, however, are not without protection under the EERA. The Association has the duty to fairly represent the interests of the Charging Parties in bargaining with the

District. Indeed, the Charging Parties assert that the Association breached its duty to bargain in good faith as a separate allegation to the instant charge.

C. Duty of Fair Representation

We disagree with the Board agent's dismissal of the 3544.9 allegation for failure to state a prima facie case, based on her conclusion that the salary schedule was negotiated pursuant to Government Code section 3543.2(d).

The duty of fair representation is violated when an exclusive representative fails to fairly and impartially represent all employees in the unit and engages in conduct that is arbitrary, discriminatory or in bad faith. Rocklin Teachers Professional Association (1980) PERB Decision No. 124. This standard extends to an exclusive representative's actions in contract negotiations. Mount Diablo Education Association (1984) PERB Decision No. 422; Redlands Teachers Association (1978) PERB Decision No. 72. In deciding whether a charge states a prima facie case, from which a complaint shall issue, we deem that "the essential facts alleged in a charge are true." San Juan Unified School District (1977) PERB Decision No. 12. Here, Charging Parties allege: 1) that the Association was advised of their concerns regarding the lack of uniformity in the 1985-1986 salary schedule before negotiations were completed; 2) that those concerns were acknowledged in bulletins which were distributed to unit members; 3) that the

Association provided no rationale for targeting steps 6-9 to receive only a single step increase; 4) that Charging Parties requested that the Association correct the inequity in the salary schedule based on lack of uniformity, and the requests were refused; and, 5) that the Association knowingly bargained away Charging Parties rights under Education Code section 45028, thereby acting in bad faith toward Charging Parties.

In view of the alleged disparity in the salary schedule, combined with Charging Parties requests of the Association for uniformity, the allegations are sufficient to constitute a prima facie case. The question of whether or not the Association acted arbitrarily, discriminatorily or in bad faith with regard to the targeting of certain steps, is a matter that can be determined only after a hearing on the merits. This is true regardless of whether the scope limitations provided by section 3543.2(d) were exceeded, for the resolution of that issue represents no more than evidence of whether the duty of fair representation was breached and would not be determinative. Therefore, we reverse the Board agent's dismissal of the 3544.9 allegation and remand to the General Counsel for issuance of a complaint.

ORDER

Based on the foregoing, the Board AFFIRMS the regional attorney's dismissal of that portion of the charge alleging that the Association breached its duty to bargain in good

faith. As to the claimed violation of the duty of fair representation, we REMAND the case to the General Counsel for issuance of a complaint pursuant to PERB Regulation 32640.[6] 6

Chairperson Hesse and Member Craib joined in this Decision.

[6]PERB Regulations are codified at California Administrative Code, title 8, part III, section 31001 et seq.