



STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES)	
ASSOCIATION and its MARK WEST)	
CHAPTER #570,)	
)	
Charging Party,)	Case No. SF-CE-1614
)	
v.)	PERB Decision No. 1011
)	
MARK WEST UNION SCHOOL DISTRICT,)	September 2, 1993
)	
Respondent.)	

Appearance: William C. Heath, Attorney, for California School Employees Association and its Mark West Chapter #570.

Before Blair, Chair; Caffrey and Garcia, Members.

DECISION

BLAIR, Chair: This case is before the Public Employment Relations Board (PERB or Board) on an appeal by the California School Employees Association and its Mark West Chapter #570 (CSEA) of a Board agent's dismissal of its unfair practice charge for failure to state a prima facie case. The charge alleged that the Mark West Union School District (District) violated section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA)¹ by refusing to bargain with CSEA concerning the

¹EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. EERA section 3543.5 states, in pertinent part:

It shall be unlawful for a public school employer to do any of the following:

- (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise

unilateral subcontracting of bargaining unit work.

DISCUSSION

A brief summary of the facts in this case is as follows: The District laid off Life Lab Coordinators from two schools in the summer of 1992. In October 1992, CSEA became aware that volunteers were being used to perform the duties previously performed by bargaining unit members designated as Life Lab Coordinators at the District's new school and at one other school from which layoffs had been made. CSEA objected to the use of volunteers and requested that the District negotiate the issue, but was told that the District did not intend to stop using the volunteers.

The Board agent dismissed the charge on the ground that no facts were alleged to show a connection between the decision to layoff the Life Lab Coordinators and the subsequent use of volunteers. In support of that position he cites San Diego Adult Educators v. Public Employment Relations Bd. (1990) 223 Cal.App.3d 1124 (San Diego). In that case, the college canceled certain foreign language classes due to insufficient funds. In response, there was significant public pressure to

to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

(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.

continue offering the classes. In an attempt to accommodate the desires of the public, the college decided to contract with a nonprofit corporation to offer the classes that had been eliminated. The court held that this was not a violation because there was no showing that the union members were terminated because of the decision to contract out; thus, it was not a subject of mandatory negotiation. The court explained that the college's decision to discontinue the language courses was a managerial decision based on a lack of funds and that the subsequent arrangement with the foundation resulted from a separate decision and did not constitute unilateral contracting out. The court found that there was no connection between the termination of the program and its later emergence by use of an independent agency. The amount of time between the two decisions was found not to be consequential to the analysis.

In the case presently before the Board, CSEA's amended charge alleged:

During the course of the 1991/92 school year one of the cost reduction decisions made by the District budget committee was to layoff the Life Lab Coordinators and replace them with volunteers.

We find that this allegation indicates a sufficient connection between the decision to layoff the Life Lab Coordinators and the subsequent use of volunteers.

In determining whether to issue a complaint, the Board agent is to assume that the essential facts alleged in the charge are

true. (San Juan Unified School District (1977) EERB Decision No. 12.²)

If taken as true, the amended charge suggests that the District's decisions to lay off the Life Lab Coordinators and to use volunteers were connected. By making this allegation CSEA has stated a prima facie violation of 3543.5(a), (b) and (c).

ORDER

The Board hereby REMANDS this case to the PERB General Counsel to issue a complaint.

Members Caffrey and Garcia joined in this Decision.

²Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board.