21 PERC ¶ 28015

BERKELEY UNIFIED SCHOOL DISTRICT

California Public Employment Relations Board

Berkeley Federation of Teachers, Local 1078, Charging Party, v. Berkeley Unified School District, Respondent.

Docket No. SF-CE-1898

Order No. 1175

November 13, 1996

Before Caffrey, Chairman; Garcia and Dyer, Members

Unilateral Change -- School Preregistration -- Term And Condition Of Employment -- 43.14, 72.589, 72.611, 72.612, 72.667 School district's decision to discontinue practice of permitting employees' children to preregister at high school was not within scope of representation because practice was not logically and reasonably related to terms and conditions of employment. Accordingly, union's refusal-to-bargain charge was dismissed.

APPEARANCES:

Van Bourg, Weinberg, Roger & Rosenfeld by Stewart Weinberg, Attorney, for Berkeley Federation of Teachers, Local 1078; Schools Legal Counsel by Ralph D. Stern, General Counsel, for Berkeley Unified School District.

Decision and Order

CAFFREY, Chairman:

This case is before the Public Employment Relations Board (Board) on appeal by the Berkeley Federation of Teachers, Local 1078 (Federation) of a Board agent's dismissal (attached) of the Federation's unfair practice charge. In the charge, the Federation alleged that the Berkeley Unified School District (District) violated section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA)1 when it unilaterally eliminated the practice of allowing employees to pre-enroll and pre-register their children at District schools without providing the Federation with notice and the opportunity to negotiate over the change or its impact.

The Board has reviewed the entire record in this case, including the Federation's unfair practice charge, the Board agent's warning and dismissal letters, the Federation's appeal and the District's response thereto. The Board finds the warning and dismissal letters to be free of prejudicial error and hereby adopts them as the decision of the Board itself.

The unfair practice charge in Case No. SF-CE-1898 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Garcia and Dyer joined in this Decision.

1 EERA is codified at Government Code section 3540 et seq. 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 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.E

Dismissal/Refusal to Issue Complaint

The above-referenced unfair practice charge alleges the Berkeley Unified School District (District) unilaterally changed a benefit of employment without providing the Berkeley Federation of Teachers (Federation) with notice and an opportunity to negotiate the change. This conduct is alleged to violate Government Code sections 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA).

I indicated to you, in my attached letter dated August 6, 1996, that the above-referenced charge did not state a prima facie case. You were advised that, if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to August 16, 1996, the charge would be dismissed.

I have not received either an amended charge or a request for withdrawal. Therefore, I am dismissing the charge based on the facts and reasons contained in my August 6, 1996 letter.

Warning Letter

The above-referenced unfair practice charge alleges the Berkeley Unified School District (District) unilaterally changed a benefit of employment without providing the Berkeley Federation of Teachers (Federation) with notice and an opportunity to negotiate the change. This conduct is alleged to violate Government Code sections 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA).

Investigation of the charge revealed the following. The Federation is the exclusive bargaining representative of certificated employees in the District.

For a number of years, it has been the unwritten policy of the District to allow the children of District employees, including those represented by the Federation, to pre-register their children at Berkeley High School prior to all other students.

In May 1996, the District informed the Federation that it was discontinuing this policy for all District employees. The Federation asserts the District refused to bargain the decision and the impact of decision.

Based on the above stated facts, the charge fails to state a prima facie violation of the EERA, for the reasons stated below.

In determining whether a party has violated EERA section 3543.5(c), PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. (*Stockton Unified School District* (1980) PERB Decision No. 143.) Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented before the employer notified the exclusive representative and gave it an opportunity to request negotiations. (*Walnut Valley Unified School District* (1981) PERB Decision No. 160; *Grant Joint Unified High School District* (1982) PERB Decision No. 196.)

Government Code section 3543.2(a) sets forth the scope of representation as "matters relating to wages, hours of employment, and other terms and conditions of employment" and specially enumerates those items which fall within the "terms and conditions of employment." Section 3543.2(a) does not specifically enumerate the preferential enrollment of employee's children as a

"term and condition of employment."

Government Code section 3541.3(b) provides PERB with exclusive initial jurisdiction to determine whether a particular item is within the scope of bargaining. In *Anaheim Union High School District* (1981) PERB Decision No. 177, PERB set forth the test under EERA for items not specifically enumberated in section 3543.2(a). An item is negotiable if:

> 1. It is logically and reasonably related to wages, hours, or an enumerated term and condition of employment;
>
> 2. The subject is of such concern to management and employees that conflict is likely to occur, and the mediatory influence of the collective negotiations is the appropriate means of resolving the conflict, and;
>
> 3. The employer's obligation to negotiate would not significantly abridge its freedom to exercise those managerial prerogatives (including matters of fundamental policy) essential to the achievement of the district's mission.

The Federation asserts the preregistration of children at Berkeley High School simplifies the bargaining unit members' lives and thus logically effects the employee's hours. This argument is, however, unpersuasive. The preregistration of an employee's child does not effect the employee's wages, hours or any other term or condition of employment. The Federation does not demonstrate that the employee is in any way involved in the actual enrollment of their children. It is a benefit received by a family member of the employee and in no way effects the bargaining unit members' employment. Although the discontinuation of this policy may be significant to the children of District employees, it does not result in a violation of the EERA, as preregistration is not a matter within the scope of representation.