

STATE OF CALIFORNIA
 DECISION OF THE
 PUBLIC EMPLOYMENT RELATIONS BOARD



DRY CREEK TEACHERS ASSOCIATION,)	Case No. S-CE-139
)	
Charging Party,)	PERB Order No. Ad-81
)	
v.)	ADMINISTRATIVE APPEAL
)	
DRY CREEK JOINT ELEMENTARY)	RE: PETITION FOR REACTIVATION,
SCHOOL DISTRICT,)	FINDING OF REPUGNANCY, IMMEDIATE
)	HEARING BY THE BOARD ITSELF, AND
Respondent.)	OTHER EXPEDITED RELIEF INCLUDING
)	POINTS AND AUTHORITIES
)	
)	March 6, 1980

Appearances: Marcus Vanderlaan and Mark D. Millard, Attorneys for Dry Creek Teachers Association; Douglas A. Lewis, Attorney for Dry Creek Joint Elementary School District.

Before Gluck, Chairperson; Gonzales and Moore, Members.

ORDER

This case comes to the Public Employment Relations Board upon a request by the charging party to "reactivate" unfair practice proceedings which have been in abeyance since August of 1973, pending completion of binding arbitration. The Board itself takes jurisdiction of this matter for the purpose of determining whether the arbitrator's award is repugnant to the purposes of the Educational Employment Relations Act. This action is taken because this is a case of first impression, there is no apparent statute of limitation to apply to post-arbitration processing of a charge filed prior to arbitration,¹ and there are at present no procedural

¹See Government Code section 3541.5(a), of the Educational Employment Relations Act (hereafter EERA):

regulations which can guide the parties or Public Employment Relations Board staff.

We have considered the "Petition for Reactivation" and the Answer and issue this interim order pursuant thereto. A final decision and order will be issued at a later date. It is the determination and ORDER of this Board that:

- 1) The general counsel conduct an immediate investigation and/or hearing of the charging party's claim that the arbitration award is repugnant to the purposes of EERA.

(a) Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not do either of the following (1) issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge; (2) issue a complaint against conduct also prohibited by the provisions of the agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted, either by settlement or binding arbitration. However, when the charging party demonstrates that resort to contract grievance procedure would be futile, exhaustion shall not be necessary. The board shall have discretionary jurisdiction to review such settlement or arbitration award reached pursuant to the grievance machinery solely for the purpose of determining whether it is repugnant to the purposes of this chapter. If the board finds that such settlement or arbitration award is repugnant to the purposes of this chapter, it shall issue a complaint on the basis of a timely filed charge, and hear and decide the case on the merits; otherwise, it shall dismiss the charge. The board shall, in determining whether the charge was timely filed, consider the six-month limitation set forth in this subdivision to have been tolled during the time it took the charging party to exhaust the grievance machinery.

- 2) The general counsel is to submit to the Board itself the record of any proceeding undertaken, his findings, and his recommendation on this matter.
- 3) In view of the foregoing, the unfair practice hearing scheduled on Thursday, March 6, 1980 is cancelled.

PER CURIAM