STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, CHAPTER 305, Charging Party, v. ALUM ROCK UNION SCHOOL DISTRICT, Respondent.	)	Case No. SF-CE-170
MT. DIABLO EDUCATION ASSOCIATION, CTA/NEA, Charging Party, and JOHN MILLS, PETER MOLINO, CAROL YOUNG, CATHERINE AVINGTON, LAURIE PETERSON and LES GROOBIN, Intervenors, v. MT. DIABLO UNIFIED SCHOOL DISTRICT, Respondent.	)	Case No. SF-CE-452 PERB Decision No. Ad-115 September 22, 1981
MT. DIABLO FEDERATION OF TEACHERS, LOCAL 1902, CFT/AFT, AFL-CIO, JOHN MILLS, PETER MOLINO, CAROL YOUNG, CATHERINE AVINGTON, LAURIE PETERSON AND LES GROOBIN, Charging Parties, v. MT. DIABLO UNIFIED SCHOOL DISTRICT, Respondent.	)	Case No. SF-CE-455

Appearances: John L. Bukey, Attorney for Alum Rock Union School District. Kirsten L. Zerger, Attorney for Mt. Diablo Education Association, CTA/NEA; Margaret E. O'Donnell, Attorney (Breon, Galgani & Godino) for Mt. Diablo Unified School District; W. Daniel Boone, Attorney (Van Bourg, Allen, Weinberg & Roger) for the individually named charging parties and Mt. Diablo Federation of Teachers, Local 1902, CFT/AFT, AFL-CIO.

Before Jaeger, Moore and Tovar, Members.

DECISION

These cases come before the Public Employment Relations Board (hereafter PERB or Board) on appeal from the chief administrative law judge's (hereafter CALJ) denial of separate motions filed by the Alum Rock Union School District and the Mt. Diablo Unified School District (hereafter District or Districts) to reopen the record and clarify the remedy in two separate unfair practice cases. Both unfair practice cases are currently on the Board's appellate docket concerning exceptions filed to hearing officer proposed decisions[1] in the respective cases. In each case, after issuance of the proposed decision, the Districts filed motions with the chief administrative law judge.

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[1]PERB administrative regulations are located in the California Administrative Code, title 8, sections 3100 et seq. (hereafter PERB Rules). Proposed decisions are provided for in PERB Rule 32215, which states in relevant part:

> At the close of the formal hearing the case shall be submitted to the Board agent conducting the hearing or another Board agent assigned by the Chief Administrative Law Judge who shall issue a proposed decision or submit the record of the case to the Board itself for decision pursuant to instructions from the Board itself.

The CALJ concluded that he had no jurisdiction to consider the motions because his authority over an unfair practice matter ceases upon issuance by the hearing officer of a proposed decision.[2] He certified his denial of the respective motions as an administrative decision which the parties may appeal to the Board.[3] These motions involve similar issues, and the Board has consolidated them for purposes of this decision. For the reasons set forth below, the Districts' motions are denied.

PROCEDURAL HISTORY AND FACTS

On January 18, 1978, the California School Employees Association, Chapter 305 (hereafter CSEA) filed unfair practice charges against the Alum Rock Union School District. The complaint alleged that the District unlawfully refused to negotiate regarding the impact of a reclassification scheme instituted by the District.

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[2]The CALJ cited PERB Rule 32215, as the basis for his conclusion. See footnote 1, supra, for text.

[3]PERB Rule 32350 states in relevant part:

> (a) An administrative decision is any determination made by the . . . Chief Administrative Law Judge . . . other than a refusal to issue a complaint in an unfair practice case pursuant to Section 32630, or a decision issued pursuant to Section 32654(e) or a decision which results from the conduct of a formal hearing.

PERB Rule 32360 states in relevant part:

> (a) An appeal may be filed with the Board

The matter was held in abeyance pending the Board's decision in a similar case.[4] At the request of CSEA, the matter was taken out of abeyance and formal hearing was held on April 16 and 17, 1980. In the proposed decision, issued on April 6, 1981, the hearing officer sustained the unfair practice charge, finding violations of section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (hereafter EERA).[5] The District filed exceptions on April 27, 1981.[6]

> itself from any administrative decision, except as noted in section 32380.

[4]Healdsburg Union High School District and Healdsburg Union School District (6/19/80) PERB Decision No. 132.

[5]The EERA is codified in Government Code sections 3540 et seq. All statutory references are to the Government Code unless otherwise noted. Sections 3543.5(a), (b) and (c) provide:

> (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.
>
> (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.

[6]The proposed decision and exceptions are part of a separate unfair practice file of which PERB may take administrative notice. Santa Monica Community College District (9/21/79) PERB Decision No. 103.

On April 29, 1981, the District filed its motion entitled "Motion for Clarification of the Order and Reopening of the Record to Take Evidence on Subsequent Events That Affect the Remedy (Amended)." The Alum Rock District requested that the hearing record be reopened to clarify the hearing officer's order and introduce new evidence relevant to the remedies ordered by the hearing officer. That motion was denied by the CALJ on the same day it was filed and the instant appeal was filed on May 11, 1981.

On March 25, 1980, the Mt. Diablo Education Association (hereafter Association) filed an unfair practice charge against the Mt. Diablo Unified School District charging a violation of sections 3543.5(a), (b) and (c) of the EERA. The charge alleged that the District refused to meet and negotiate with the Association regarding the implementation and impact of layoffs which took place in the spring of 1980. On April 7, 1980, the Mt. Diablo Federation of Teachers, Local 1902, CFT/AFT, AFL-CIO (hereafter Federation) and certain Mt. Diablo teachers who were members of the Federation filed an unfair practice charge against the District alleging that the District's unilateral adoption of the same-date-of-hire criteria violated sections 3543.5(a) and (c). Formal hearing on the unfair practice charges was held on August 11-15, 18, September 15-18, and October 1-3, 1980. The proposed decision was issued on April 3, 1981. The District filed exceptions

to the proposed decision and filed its motion, entitled "Motion to Reopen the Case for Further Proceedings" on the same date, April 14, 1981. The Mt. Diablo motion contained the same request as the Alum Rock District's but also asserted that the new evidence would establish its reduced liability in connection with the underlying unfair practice charges. The motion was denied by the CALJ on April 16, 1981 and the instant appeal was filed April 27, 1981.

DISCUSSION

EERA mandates and empowers PERB to determine the validity of unfair practice charges.[7] The Board has delegated to the CALJ and his agents specific responsibility for processing and hearing such cases.[8] Once a proposed decision has been

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[7]EERA section 3541.5 states in pertinent part:

> The initial determination as to whether the charges of unfair practices are justified and, if so, what remedy is necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the Board.

[8]PERB Rule 32118 states in pertinent part:

> The Chief Administrative Law Judge is the officer designated by the Board itself to preside over the Division of Administrative Law. The Board delegates to the Chief Administrative Law Judge all responsibility for processing and hearing unfair practice matters including informal conferences, the issuance of dismissals and written decisions following hearing.

issued or, alternatively, the record of the case has been submitted directly to the Board for decision, the CALJ and his agents have no further authority over the case.[9] Neither the CALJ nor his agents are empowered to reopen the hearing record after issuance of a proposed decision. The Board therefore upholds the decision by the CALJ refusing to consider the motion on its merits.[10]

The Board has general statutory authority to grant relief which it deems necessary to effectuate the purposes of the EERA.[11] However, the Board declines to exercise its authority in this instance because the relief requested would

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[9]PERB Rule 32215. See footnote 1, supra.

[10]The situation presently before the Board is to be distinguished from one wherein a request to reopen the record is made prior to issuance by the hearing officer of a proposed decision. For example, in Beverly Hills Unified School District (8/8/78) PERB Decision No. 63, the hearing officer contemplated such relief but denied same on the ground that a proper showing had not been made and that, in general, such a procedure is discouraged.

Additionally, this situation is to be distinguished from that in which a request to submit new and additional evidence and argument pertaining to the case is made subsequent to the Board's decision. Santa Clara Unified School District (5/7/80) PERB Decision No. 104(a).

[11]Section 3541.3 states in relevant part:

> The board shall have all of the following powers and duties:
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> . . . . . .
>
> (n) To take such other action as the board deems necessary to discharge its powers and

merely duplicate existing means of addressing the Districts' concerns.

The Districts' grounds for the motions being considered are twofold: the remedy ordered by the hearing officer is ambiguous;[12] and, the remedy is inadequate without the introduction of further evidence. These objections will be considered separately.

First, the clarification of the remedies' alleged ambiguities does not require the introduction of new evidence. The Board may resolve the issue when it evaluates the Districts' exceptions, and any remaining uncertainties can be resolved via a compliance hearing. Contrary to the Mt. Diablo District's assertions, PERB has utilized compliance hearings. See Santa Monica Community College District (9/21/79) PERB Decision No. 103; San Francisco Community College District (10/12/79) PERB Decision No. 105; and Santa Clara Unified School District, supra. To reopen the hearing record at this juncture for the purpose of clarifying the order is therefore unnecessary and would serve no statutory objective.

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duties and otherwise to effectuate the purposes of this chapter.

[12]The Alum Rock District claims that the remedy is ambiguous because internally inconsistent, while the District in Mt. Diablo asserts that the ambiguity results from vagueness.

Second, the Districts also allege that the remedies ordered are inadequate because it does not take account of the parties' current circumstances. The Districts point out that many of the effects were not known at the time of the hearing and urge that the record be reopened so that additional details can be presented.

The Mt. Diablo District urges that the remedy as set forth in the order is deficient because it does not specify the instances in which compensation is owing to affected employees. In NLRB v. Rutter-Rex Mfg. Co. (5th Cir. 1957) 134 F.2d 594 [40 LRRM 2213], the court considered an NLRB decision in which an employer objected to the validity of the order on the ground that the record did not reveal the full extent of its liability. The Court of Appeal, reviewing the NLRB's order, held that the employer had no right to demand,

> . . . that all the matters be thrashed out in the initial Board proceeding. Undertaking to ascertain the myriad of details respecting the right to, and the extent of, the remedy as to each specific striker out of a large labor force would complicate the proceeding and perhaps make it endless. The final order declaring it to be an unfair labor strike cannot be obtained unless the hearing on the main issues can end. NLRB v. Rutter-Rex Mfg. Co., supra, 134 F.2d at p. 598 [40 LRRM at p. 2216].

Whatever uncertainties are perceived to exist in the Board's ultimate remedy can be resolved in a compliance hearing.

The Board concludes, in light of the above-described alternatives, that the record of the hearing on the merits in the two cases need not contain all of the details of the impact arising from the Districts' alleged unfair practices. The parties' interests are adequately protected without reopening the record at this stage of the proceedings.

ORDER

Upon the foregoing decision and the entire record in this case, the Public Employment Relations Board ORDERS that the motions to reopen the hearing record, made by the Alum Rock Union School District and the Mt. Diablo Unified School District, respectively, shall be DENIED.

By: John W. Jaeger, Member

Barbara D. Moore, Member

Irene Tovar, Member