

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



FRESNO UNIFIED SCHOOL DISTRICT,
Charging Party,
v.
FRESNO TEACHERS ASSOCIATION, CTA/NEA,
Respondent.

Case No. S-CO-33(78/79)

PERB Order No. Ad-72

ADMINISTRATIVE APPEAL

July 19, 1979

FRESNO TEACHERS ASSOCIATION, CTA/NEA,
Charging Party,
v.
FRESNO UNIFIED SCHOOL DISTRICT,
Respondent.

Case No. S-CE-257(78/79)

Appearances: Lee T. Paterson, Attorney (Paterson and Taggart) for Fresno Unified School District; Ernest H. Tuttle, III, Attorney (Tuttle and Tuttle) for Fresno Teachers Association, CTA/NEA.

Before Gluck, Chairperson; Gonzales and Moore, Members.

DECISION AND ORDER

The Fresno Unified School District has filed a motion with the Public Employment Relations Board (hereafter PERB or Board) seeking to immediately transfer an unfair practice proceeding to the Board itself for hearing and decision. The Board denies the motion to transfer for the reasons set forth in the recommendations contained in the attached letter of the PERB general counsel to the moving party.

PER CURIAM

PUBLIC EMPLOYMENT RELATIONS BOARD

Headquarters Office
923 12th Street, Suite 201
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(916) 322-3088



June 21, 1979

Mr. Lee T. Paterson
Mr. James C. Romo
Paterson & Taggart
2550 Via Tejon, Suite 3N
Palos Verdes Estates, CA 90274

RE: Motion to Transfer Unfair Practice Charge S-CO-33(78/79)
to the Board Itself

Dear Sirs:

On June 6, 1979, on behalf of the Fresno Unified School District, you filed a motion to transfer the above unfair practice charge immediately to the Board itself for hearing and decision. The charge was filed with hearing officer Gary Gallery of the Sacramento Regional Office. The motion alleged as authority Title 8, California Administrative Code, section 35018(c). As a hearing officer has no authority to transfer an unfair practice charge directly to the Board itself, the motion has been referred to the General Counsel.

Section 35018(c) does not exist currently as a PERB rule. Section 32215 authorizes the Board itself to initiate submission of a hearing record to it directly for decision. Section 32168 authorizes the Board itself or any member thereof to conduct an unfair practice hearing initially. Under either of these sections the Board itself must initiate an action to transfer a charge or hearing record to it. Such a decision may not be made by the General Counsel. Therefore, I have refiled your motion on this date with Mr. Steve Barber, Executive Assistant to the Board.

In past instances certain case records have been transferred directly to the Board by its initiative following a recommendation from the General Counsel. As a party has no right to a transfer to the Board itself, I must assume that your motion will be decided in the discretion of the Board itself and you will be notified if the Board determines to grant the motion.

Mr. Lee T. Paterson
Mr. James C. Romo
June 21, 1979

I have not recommended that the Board initiate the transfer in case no. S-CO-33(78/79) for the following reasons:

1. Hearings are currently being conducted on charges alleging that a strike constitutes an unfair practice under the EERA. The present case is no more unique than other strike cases currently pending before hearing officers.
2. In its May 16, 1979 amended charge, charging party "prays that respondents be found to have violated section 3543, subdivision (b) and (c) and section 3543 of the act for violation of a valid collective bargaining agreement... ." "Further, charging party prays that the PERB award to the District monetary damages for breach of contract... ." No section 3543(b) and (c) exist in the EERA. Section 3543 itself is not an unfair labor practice, but specifies the rights of public school employees. Assuming charging party means to allege that section 3543.6(b) and (c) have been violated, the normal case processing and hearing procedures afford a full opportunity for a review of both the charge for legal sufficiency and PERB's jurisdiction. On the motion of a party or his or her own motion, the hearing officer may dismiss the charge for lack of jurisdiction providing the parties a full opportunity to appeal the dismissal to the Board itself.

The bases for my recommendation to the Board itself are stated for your information and in no way give information as to the final decision by the Board on your motion.

Sincerely,

William P. Smith
General Counsel

WFT:bf

cc: Ernest H. Tuttle, III
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