

STATE OF CALIFORNIA
DECISION OF THE EDUCATIONAL
EMPLOYMENT RELATIONS BOARD

MAGNOLIA EDUCATORS ASSOCIATION,)
Charging Party) Case No. LA-CE-31
and) EERB Decision No. 19
MAGNOLIA SCHOOL DISTRICT,)
Respondent)

Appearances: Kenneth E. Ristau, Jr., Attorney (Gibson, Dunn and Crutcher), for Magnolia School District; Paul Crost, Attorney (Reich, Adell and Crost), for Magnolia Educators Association.

Before Alleyne, Chairman; Gonzales and Cossack, Members.

OPINION

This is an appeal to the Educational Employment Relations Board (EERB) upon exceptions to the recommended decision of the hearing officer filed by the Magnolia Educators Association (Association).¹ The hearing officer ordered the case dismissed on the ground that the charging party failed to prove by a preponderance of the evidence that the Magnolia School District (District) refused to grant reasonable periods of released time for the purpose of meeting and negotiating.

The parties submitted a summary of stipulated facts in lieu of presenting evidence at a hearing. The stipulated facts indicate that the District employs 211 certified teachers for approximately 4,500 students. The District recognized the Association as the exclusive representative of a unit of certificated employees pursuant to the Educational Employment Relations Act (EERA)² and

¹⁸ Cal. Admin. Code Secs. 35028 through 35034 describe the procedure for an appeal.

² Gov. Code Sec. 3540 et seq. All code references herein are to the Government Code.

agreed to discuss contract proposals at an initial meeting on May 21, 1976, at 3:00 p.m. At this meeting the Association requested that the negotiating team be granted released time during the instructional day for the purpose of negotiating. The District refused this request. Six more negotiations meetings were held between May 21, 1976, and July 1, 1976, all of which were held at 4:00 p.m. or later at the request of the Association and were attended by nine teachers. Five teachers attended eight additional negotiating meetings held after July 1, 1976 at the Association's request. These meetings commenced at 6:30 or 7:00 p.m., with the exceptions of the meetings of July 22, 1976, and July 23, 1976, which commenced at 1:00 p.m. and 9:00 a.m. respectively. At the last of the eight meetings, on September 8, 1976, the Association proposed that the next meeting be held on September 21, 1976, at 9:00 a.m. As stated by the parties:

Representatives of the District agreed to hold a meeting on September 21, but, because of a District policy against scheduling such meetings during teaching time, requested that the meeting be scheduled at or after 3:00 p.m. The Association requested that the District grant not only release from work time but from teaching time and that negotiations be conducted during such time in general in the future. The District declined and stated that it would agree to release the committee for negotiations from work time at the conclusion of actual teaching time. The Association thereupon declared an impasse and said confirmation would be sent to the EERB.

The representatives of the Association did not propose that the meeting of September 21, 1976 be held at any hour other than 9:00 a.m. The Educational Employment Relations Board appointed a mediator who met with the Association and the District at 3:00 p.m. on September 20, 1976, the time requested by the Association. The stipulated facts further indicate that:

Before concluding the meeting of September 20, 1976, the mediator inquired of the parties as to when each of them would next be able to meet. The Association stated that it wanted

to meet during the instructional day, i.e., during teaching time. The mediator announced that he could not meet at 9:00 a.m., but that he would have time later in the day. Pursuant to the aforementioned District policy against scheduling such meetings during teaching time, the District requested that future meetings be scheduled at any time after 3:00 p.m. so that a minimum of 30 minutes of release time from the minimum work day would be provided for the five teachers negotiating with the District. The mediator stated that he would be unable to meet at 3:00 p.m. on the day in question due to an election he was conducting at another school district. The mediator then stated he would telephone the representatives of the Association and the District to arrange the next meeting.

The mediator telephoned the District on October 5, 1976, to suggest that the next mediation session between the District and the Association take place on October 13, 1976, at 10:00 a.m. The District agreed to meet on this date, but asked that the meeting be held at 3:00 p.m. so as not to conflict with the aforementioned District policy against scheduling such meetings during teaching time. The mediator stated that he was scheduled to be in Newport Beach on the evening of October 13, 1976, and that he would therefore have to reschedule this proposed meeting.

If called to testify, representatives of the Association would state that during the telephone call with the Association on October 5, 1976, the mediator asserted that he did not have sufficient afternoons available to continue the mediation process. Witnesses for the District would testify, if called, that other than as to the day in question the mediator made no such assertion to them as to his availability nor did he make any statement about his ability to continue the mediation process. The parties hereto stipulate that neither the Association nor the District made inquiry of the mediator or the Mediation Service as to the availability of other mediators to handle the mediation process in afternoon or evening sessions. The parties further stipulate that it is the policy of the Mediation Service to provide mediators to meet with parties at any time agreed by the parties,

morning, late afternoon or evening subject to the availability of mediators. By this stipulation the parties are not admitting that what the mediator stated was true nor are they stipulating that the Mediation Service could not, through other mediators, staff the mediation process for afternoons, evenings or weekends.

On October 13, 1976, the EERB notified the District that the services of the mediator would be held in abeyance pending resolution of the unfair practice charge filed by the Association on October 8, 1976.

With regard to general District policies and procedures, the parties stipulated that all classroom teachers are required to remain at school at least one-half hour after classes have ended for the day. Classes regularly end at 3:00 p.m. Any negotiating session that commences at 3:00 p.m. on a regular school day necessarily involves a minimum of one-half hour of released time. The absence of a teacher from the classroom results in the assignment of a paid substitute teacher, which detracts from the educational program. The cost to the District of hiring a substitute teacher for one day is \$35.00, but a substitute teacher may be hired on a half-day basis during the afternoon. At times the District administration requires teachers to attend certain functions and provides substitutes in such cases. The District's policy against scheduling negotiating sessions with teachers during their teaching time does not preclude sessions during working days with teachers who have completed their actual classroom teaching for the day. The District adopted its 1976-1977 budget on August 2, 1976, including expenditures for all contract provisions tentatively agreed to by the District and the Association.

On the foregoing facts, we find that the District's restriction of released time to the one-half hour of nonteaching time at the end of the instructional day constitutes a per se violation of Government Code Sections 3543.5(b) and 3543.1(c) because of the rigidity and inflexibility of the District's policy. Section 3543.5(b) provides in pertinent part:

It shall be unlawful for a public school employer to:...

- (b) Deny to employee organizations rights guaranteed to them by this chapter.

and Section 3543.1(c) sets forth the right of an employee organization to released time:

- (c) A reasonable number of representatives of an exclusive representative shall have the right to receive reasonable periods of released time without loss of compensation when meeting and negotiating and for the processing of grievances.

"Reasonable released time" means, at least, that the District has exhibited an open attitude in its consideration of the amount of released time to be allowed so that the amount is appropriate to the circumstances of the negotiations. The District may have to readjust its allotment of released time based upon the reasonable needs of the District, the number of hours spent in negotiations, the number of employees on the employee organization's negotiating team, the progress of the negotiations and other relevant factors. A district's policy does not provide for reasonable periods of released time if the policy is unyielding to changing circumstances.

The District in the present case did not grant a reasonable amount of released time because it established the rigid policy that teachers would not be given any released time during the instructional day. While it appears from the stipulated facts that the District's policy did not hinder negotiations through the summer months, a problem developed after the school year began. The facts show that although the District's inflexible policy may not have totally subverted the negotiating process, the policy at least delayed and frustrated the efforts of the appointed mediator to resolve the dispute. If the District believed its released time policy appropriate to the circumstances of the negotiations prior to the appointment of mediator, it should have reconsidered the policy given the limitations of the mediator. While another mediator might have been appointed in order to accommodate a

reasonable insistence upon negotiations beginning at 3:00 p.m., the fact remains that the District never considered the possibility of altering its policy to allow released time during the instructional day, even for a single negotiating session.

An analysis of Section 3543.1(c) indicates that the Legislature contemplated, at least in some circumstances, that some released time during the instructional day as well as during the one-half hour noninstructional workday would be appropriate. Had the Legislature found that released time during the instructional day could never be appropriate, it could have so provided. Instead, it generally allowed the amount of released time that would be appropriate under the circumstances of the negotiations in the individual district.

Because the District did not comply with Section 3543.1(c) by failing to allow reasonable released time, it follows that the District violated Section 3543.5(b) in that it denied to an employee organization rights guaranteed by the EERA. Having found such a violation, we need not inquire whether the District also violated Government Code Section 3543.5(c),³ as alleged by the Association, because a finding of such a violation would not allow the Association relief additional to that already afforded. Thus, we decline to address that issue.

ORDER

Pursuant to Government Code Section 3541.5(c) of the Educational Employment Relations Act, it is hereby ordered that the Magnolia School District and its representative shall:

1. CEASE AND DESIST FROM failing to grant to a reasonable number of representatives of the Magnolia Educators Association reasonable periods of released time without loss of compensation when meeting and negotiating;

³Gov. Code Sec. 3543.5(c) provides in pertinent part:

It shall be unlawful for a public school employer to:...

- (c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE ACT:

- (a) Prepare and post copies of this order at each of its schools and work sites for 20 workdays in conspicuous places, including all locations where notices to employees are customarily placed.
- (b) At the end of the posting period, notify the Los Angeles Regional Director of the Educational Employment Relations Board of the actions it has taken to comply with this order.

By: Raymond J. Gonzales, Member

Reginald Alleyne, Chairman

Jerilou H. Cossack, Member

Dated: June 27, 1977