

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



DUARTE UNIFIED SCHOOL DISTRICT,)	
)	
Charging Party,)	Case No. LA-CO-202
)	
v.)	PERB Decision No. 281
)	
DUARTE UNIFIED EDUCATION ASSOCIATION,)	February 3, 1933
CTA/NEA,)	
)	
Respondent.)	

Appearances; James C. Romo, Attorney (Atkinson, Andelson, Loya, Ruud & Romo) for Duarte Unified School District; Charles R. Gustafson, Attorney for Duarte Unified Education Association, CTA/NEA.

Before Tovar, Jaeger and Morgenstern, Members.

DECISION

JAEGER, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Duarte Unified Education Association, CTA/NEA (Association) of a hearing officer's partial refusal to issue a complaint and partial dismissal without leave to amend of a charge filed by the Duarte Unified School District (District) against the Association. In the dismissed portion of the charge, the District alleged that the Association violated subsections 3543.6(c) and (d) of the Educational Employment Relations Act by engaging in a pre-impasse strike in breach of a contractual no-strike clause. The hearing officer based her partial dismissal on a finding that the District's breach of contract allegation was outside of the jurisdictional limitation set

forth in subsection 3541.5(b).¹ The Association appeals, arguing that the dismissed portion of the charge was within the Board's jurisdiction.

We find, pursuant to PERB rules, that, since the Association was not the charging party, it had no standing to appeal the hearing officer's partial refusal to issue a complaint and partial dismissal.² Accordingly, the Association's appeal is dismissed.³

¹Subsection 3541.5(b) provides:

The board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of such an agreement that would not also constitute an unfair practice under this chapter.

²PERB rules are codified at title 8, California Administrative Code, section 31001 et seq. Prior to September 20, 1982, the rules governing appeal of a hearing officer's refusal to issue a complaint were located at section 32630. That section provided in relevant part:

(b) The charging party may . . . (2) file an original and four copies of an appeal of the refusal with the Board itself within 20 days following service. The appeal shall be filed with the Executive Assistant to the Board and shall be in writing, signed by the party or its agent, and contain the facts and arguments upon which the appeal is based. Service and proof of service of the appeal pursuant to section 32140 are required. (Emphasis added).

³Since our determination is based on a finding that the Association lacked standing to bring this appeal, we need not consider, and expressly decline to adopt, the hearing officer's reason for dismissing the District's breach of contract allegation.

ORDER

After a review of the entire record in this case, the Public Employment Relations Board ORDERS that paragraph 4 of the amendment to unfair practice charge LA-CO-202 is DISMISSED without leave to amend.

Members Tovar and Morgenstern joined in this Decision.



PUBLIC EMPLOYMENT RELATIONS BOARD
OF THE STATE OF CALIFORNIA

DUARTE UNIFIED SCHOOL DISTRICT)
)
 Charging Party,)
)
 v.)
)
 DUARTE UNIFIED EDUCATION)
 ASSOCIATION/CTA/NEA)
)
 Respondent)
_____)

Case No. LA-CO-202

NOTICE OF PARTIAL
REFUSAL TO ISSUE
COMPLAINT AND
PARTIAL DISMISSAL
WITHOUT LEAVE TO
AMEND
(11/18/81)

NOTICE IS HEREBY GIVEN that no complaint will be issued on that portion of the above-captioned unfair practice charge as is set forth in paragraph 4 of the amendment to the charge filed September 4, 1981, and that portion of the charge is hereby dismissed without leave to amend. Acting on its own motion, this partial dismissal is ordered by the Chief Administrative Law Judge pursuant to PERB Regulation section 32630(a) (California Administrative Code, title 8, part III). This partial dismissal is made on the ground that paragraph 4 of the amended charge fails to allege facts sufficient to state a prima facie violation of the Educational Employment Relations Act (hereafter EERA).¹

It is concluded that the balance of the amended charge states a prima facie case. Thus respondent's request to dismiss all

¹California Government Code section 3540 et seq. All statutory references herein are to the EERA unless otherwise noted.

allegations which respondent asserts are barred by the statute of limitations provisions in section 3541.5(a) is denied.

BACKGROUND

The charging party, Duarte Unified School District, filed the original unfair practice charge against the respondent, Duarte Unified Education Association, on August 11, 1981, alleging a violation of section 3543.6(c) and (d). The charge states the following factual allegations:

During the last six months, the Respondent has been guilty of violating the Educational Employment Relations Act as described in the paragraph below.

1. The Respondent Association violated the duty to participate in the impasse procedures in good faith when it engaged in a work stoppage on February 10 and 11, 1981 prior to the exhaustion of the impasse procedures; and,
2. The Respondent Association violated the duty to bargain in good faith when it engaged in a work stoppage on February 10 and 11, 1981 during negotiations even through a valid no concerted activities clause was in existence at the time.

On August 17, 1981, the parties participated in an informal settlement conference, but were unable to reach agreement.²

²Unfair practice Case No. LA-CO-202 was consolidated with unfair practice Case Nos. LA-CE-1309 and LA-CE-1362 for informal purposes since all three charges involve the same two parties.

Nonetheless, during the informal, the District agreed to amend the charge and subsequently filed an amendment September 4, 1981.

Paragraph 4 of the amendment states that

. . . on or about February 10 and 11, 1981 prior to the exhaustion of the impasse procedures referred to in paragraph 2 hereinabove, Respondent Association engaged in a work stoppage in violation of a valid existing no concerted activities clause contained in the collective bargaining agreement between Respondent Association and Charging Party.

Respondent answered the original charge as amended October 22, 1981, and requested dismissal of all allegations barred by statute of limitations provision of section 3541.5(a)³. Disposition of this request was stated above.

DISCUSSION

In ordering a dismissal of a charge on the ground that it fails to allege a prima facie violation of the EERA, the PERB must assume, for the purpose of acting on the motion, that "the essential facts alleged in the charge are true". San Juan School District (3/10/77) EERB Decision No. 12.

³Section 3541.5(a) provides, in pertinent part:

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.

In the present case the District is requesting that the PERB assert jurisdiction over an alleged violation by the Association of the "no concerted activities" provision of the collective bargaining agreement between the parties. However, section 3541.5(b) states that

[T]he board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based of alleged violation of such agreement that would not also constitute an unfair practice under this chapter.

In Baldwin Park Unified School District (4/4/79) PERB Decision No. 92, the PERB held that this agency "is prohibited from enforcing negotiated agreements unless the facts alleged constitute an independent violation of the EERA". The holding in this case is essentially a restatement of section 3541.5(b).

In making an initial determination as to whether the remainder of the District's charges are justified, and deciding the outcome of the case, PERB is free to review evidence which may include the conduct alleged to be a breach of contract. However, PERB is not empowered to enforce the contract. The alleged contract violation must, of itself, constitute an independent unfair practice.

Paragraph 3 of the amendment to the charge alleges that the Association engaged in the work stoppage prior to the exhaustion of the impasse procedure "thus violating the duty to participate in the impasse procedure in good faith." This portion of the charge

addresses the work stoppage as a validly stated unfair practice charge. Thus, any amendments to the allegation of contract violation in paragraph 4 will not alter the jurisdictional limit on PERB. For this reason, paragraph 4 is dismissed without leave to amend.

This partial refusal to issue a complaint and partial dismissal of the charge without leave to amend is made pursuant to California Administrative Code, title 8, section 32630(a). Charging party may obtain review of this partial refusal to issue complaint and partial dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this Notice (section 32630(b)). Such appeal must be actually received by the executive assistant to the Board before the close of business (5:00 p.m.) on December 8, 1981 in order to be timely filed. Such appeal must be in writing, must be signed by the charging party or its agent and must contain the facts and arguments upon which the appeal is based (section 32630(b)). This appeal must be accompanied by proof of service on all parties (sections 32135, 32142 and 32630 (b)).

DATED: November 18, 1981

WILLIAM P. SMITH
Chief Administrative Law Judge

By
W. Jean Thomas
Hearing Officer