STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS BUTTE COLLEGE CHAPTER #511,	)	
Charging Party,	)	Case No. S-CE-792
v.	)	PERB Decision No.498
BUTTE COMMUNITY COLLEGE DISTRICT,	)	March 14, 1985
Respondent.	)	

Appearances; William C. Heath, Attorney for California School Employees Association; Brown and Conradi, by Nancy B. Ozsogomonyan, for Butte Community College District.

Before Hesse, Chairperson; Jaeger, Morgenstern and Burt, Members.

DECISION

This case is before the Public Employment Relations Board on an appeal by charging party of the Board agent's dismissal, attached hereto, of that portion of its charge alleging that the Butte Community College District violated section 3540 of the Educational Employment Relations Act (EERA) (Gov. Code sec. 3540 et seq.)

We have reviewed the partial dismissal and adopt it as the Decision of the Board itself.[1]

[1]We do not adopt the Board agent's statement that we have no jurisdiction to interpret the Education Code. Such an interpretation may be made where necessary to rule on an allegation that a party violated EERA. The statement by the

ORDER

The unfair practice charge in Case No. S-CE-792 is DISMISSED WITHOUT LEAVE TO AMEND.

By the BOARD

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agent in this case, however, is not critical to his decision and is, therefore, not prejudicial.

STATE Of CALIFORNIA • GEORGE DEUKMEJIAN, *Governor*

PUBLIC EMPLOYMENT RELATIONS BOARD

HEADQUARTERS OFFICE
1031 18TH STREET
SACRAMENTO, CALIFORNIA 95814
(916) 322-3088

January 3, 1985

Mr. Brian Caldeira
Field Director, CSEA
5301 Madison Avenue, Suite 10 2
Sacramento, CA 95841

RE: California School Employees Association, Chapter #511 v. Butte Community College District, Case No. S-CE-79 2

Dear Mr. Caldeira:

The above-referenced charge alleges that Respondent unilaterally transferred work out of the bargaining unit by hiring students into vacancies that have been left by attrition, and has failed and refused to negotiate with CSEA concerning the decision to do so and its effects upon the bargaining unit. An unfair practice complaint is being issued along with this letter to that effect.

The unfair practice charge also alleges that the Respondent has violated Educational Employment Relations Act section 3540 by implementing a provision contained in the contract between the parties in such a manner that "employees have less than the minimum rights contained in the Education Code . . . ."

In a telephone conversation on January 2, 1985, I informed Mr. Caldeira, CSEA's representative that this office was ready to issue a complaint as described above and a warning letter as to the allegation concerning section 3540. Mr. Caldeira requested that, instead of a warning letter being issued with time to respond, that a dismissal be issued in order that CSEA may appeal the dismissal directly to the PERB Board. Mr. Caldeira and I have discussed the charge at length and I have conveyed to him over the telephone the theories for dismissal which are set forth in the attached letter.

For the reasons set forth in my letter dated December 31, 1984, to Mr. Caldeira, attached hereto as Exhibit No. I, the above-referenced charge is dismissed.

Pursuant to Public Employment Relations Board regulation section 32635 (California Administrative Code, title 8,

part III), you may appeal the refusal to issue a complaint (dismissal) to the Board itself.

Right to Appeal

You may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal (section 32635(a)). To be timely filed, the original and five (5) copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) on January 23, 1985, or sent by telegraph or certified United States mail postmarked not later than January 23, 1985 (section 32135). The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five (5) copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal (section 32635(b)).

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany the document filed with the Board itself (see section 3 2140 for the required contents and a sample form). The document will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

Extension of Time

A request for an extension of time in which to file a document with the Board itself must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party (section 32132) .

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Very truly yours,

DENNIS M. SULLIVAN
General Counsel

By _
Jorge Leon
Staff Attorney

Attachment: Exhibit I

PUBLIC EMPLOYMENT RELATIONS BOARD
HEADQUARTERS OFFICE
1031 18TH STREET
SACRAMENTO. CALIFORNIA 95814
(916) 322-3088

December 31, 1984

Mr. Brian Caldeira
Field Director, CSEA
5301 Madison Ave., Suite 102
Sacramento. CA 95841

Re: CSEA. Chapter #511 v. Butte Community College District.
S-CE-792

Dear Mr. Caldeira:

You have filed a charge on behalf of CSEA Chapter 511 alleging that Respondent Butte Community College District (District) has engaged in conduct which violates Educational Employment Relations Act (EERA) sections 3543.5(a). (b). and (c). Specifically, you allege that the District has unilaterally transferred work out of the bargaining unit by hiring students into unit vacancies that have been left by attrition, and has failed and refused to negotiate concerning the decision to do so and its effects upon the bargaining unit. An unfair practice complaint will issue regarding this allegation. You have also alleged that the District has violated EERA section 3540 by implementing a provision contained in the contract between the parties in such a manner that "employees have less than the minimum rights contained in the Education Code. . . ."

My investigation has revealed the following facts. The parties herein are parties to a collective bargaining agreement which will expire on September 30. 1986. The agreement contains the following language in Article 18. section 18.5.1:

> A unit member who has been laid off has reemployment rights (preference to new applicants) for thirty-nine (39) months into the class from which he/she was laid off or equal or lower classes in which the unit member has served. If more than one of such positions is available, reemployment will be into the highest available class. Reemployment shall be in the reverse order

> of layoff. Unit members who accept a position in a lower class than that from which they were laid off retain reemployment rights in accordance with section 18.6. (Emphasis supplied.)

In November. 1983. it became necessary for the District to effect layoffs. Those employees affected were as follows:

1.	Joan Fredericks	Food Lab Technician
2.	Lynn Facchini	Instructional Aide - Ceramics
3.	Raul Hernandez	Audio-Visual/Instructional/Media Assistant
4.	Lyle Robinson	Media Production Assistant
5.	Carlton Holcomb	PE Equipment Manager
6.	Beverly McMillan	Instructional Aide Office Administration
7.	Kathleen Roepke	Secretary I
8.	Reggie Kaster	Secretary I

As vacancies in any unit position came open within the District, ~~the~~ District issued an open announcement for that position unless that vacancy was one for which any of the above-named individuals qualified pursuant to contract section 18.5.1. In that event, the District has telephoned that person and made an offer of reemployment. Between the time of the layoffs in November, 1983. to the present, at least twelve positions have become vacant.

CSEA disputes the District's interpretation of the contract because the District imposes a requirement that the laid off employee <u>have served</u> in the class before he/she is given the position as a matter of right. For example, a vacancy in a Secretary I position would not be offered by the District to a laid off Instructional Aide-Ceramics unless that person had served as a Secretary I in the past. Instead, in such an instance, the District has advertised the open position to the

general public. CSEA would interpret the contract so that any vacancies are filled from the layoff list before any outsiders are hired.

To support its position. CSEA cites Education Code section 88117, which provides in pertinent part:

> Persons lid off because of lack of work or lack of funds are eligible to reemployment for a period of 39 months and shall be reemployed in preference to new applicants. (Emphasis supplied.)

This section of the Education Code does not contain the same restrictive language that the contract provides, limiting preferential reemployment eligibility to positions in which a laid off employee has served. CSEA's argument is that the District's literal interpretation of the contract language results in employees receiving rights of reemployment less than they would be entitled to under the Education Code.

The District, on the other hand, argues that the Education Code provision is also limited to preferential hiring within a class. As support, it cites Education Code section 88127, regarding order of reemployment, which provides, in pertinent part:

> Whenever a classified employee is laid off, the order of layoff within the class shall be determined by length of service. The employee who has been employed the shortest time in the class, plus higher classes, shall be laid off first. Reemployment shall be in the reverse order of layoff. (Emphasis supplied .)

According to the District, the contract embodies the Education Code.

Analysis

The PERB's authority is limited to interpretation and enforcement of specific portions of the Government Code, and it has no jurisdiction to interpret the Education Code. Government Code section 3541.5(b) provides as follows:

> 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.

PERB has interpreted this provision to mean that PERB can interpret the terras of a collective agreement when the conduct alleged would also constitute an unfair practice. Grant Joint Union High School District (2/26/82). PERB Decision No. 196. However, here there has been no demonstration (or even an allegation) that the District's action constitutes an alteration of an existing policy and there is no allegation that the employer's interpretation and application of the contract otherwise constitutes an unfair practice. Accordingly, no colorable unfair practice has been presented in the facts of this charge. Victor Valley Joint Union High School District. (12/31/81) PERB Decision No. 192.

CSEA argues that the District's application of section 18.5.1 reduces rights of employees provided in the Education Code. Therefore, according to CSEA, the language of the agreement violates EERA section 3540.

That provision reads in pertinent part as follows:

> Nothing contained herein shall be deemed to supercede other provisions of the Education Code and the rules and regulations of public school employers which establish and regulate tenure or a merit or civil service system or which provide for other methods of administering employer-employee relations, so long as the rules and regulations or other methods of the public school employer do not conflict with lawful collective agreements.

To support its position, CSEA cites San Mateo City School District v. Public Employment Relations Board (1983) 33 Cal.3d. 850. This case provided the Supreme Court to review PERB decisions in Healdsburg Union High School District and Healdsburg Union School District (6/19/80) PERB Decision No. 132 and San Mateo City School District (5/20/80) PERB Decision No. 129. In the former case. PERB interpreted Government Code section 3540 to prohibit negotiations only where provisions of the Education Code would be replaced, set aside or annulled by

the language of the proposed contract clause. On remand, the Board retained its approach. Healdsburg Union High School District and Healdsburg Union School District (1/5/84) PERB Decision No. 375.

In San Mateo the California Supreme Court, upholding the PERB's approach, found that Education Code 45298 (the parallel provision to section 8817 applicable to primary and secondary schools) was among those statutes which mandate certain procedures, protections and entitlements for classified employees. "The intent of section 3540 is to preclude contractual agreements which would alter these statutory provisions. The court noted further that, "a contract proposal which would alter the statutory scheme under PERB's application of section 3540 because the proposal would 'replace or set aside[1] the section of the Education Code." Such a proposal would violate the Government Code.

CSEA has failed to show that section 18.5.1 would "replace or set aside" section 88117 of the Education Code. It merely argues, seizing on the language of section 88117 outside its full context that the Education Code intends that all laid off employees should be rehired before any outside persons are hired, regardless of their employment classification or their qualifications for new vacancies.

Because the provisions of the collective bargaining agreement do not appear to supercede Education Code guarantees, it is unnecessary to reach a further question -- i.e., whether CSEA's agreement to a purportedly substandard contract would estop the Association from complaining about its alleged illegality. (See Taylor v. Crane (1979) 24 Cal.3d 442. 155 Cal.Rptr. 695.)

Accordingly, a complaint will not issue with respect to the allegation that the District's interpretation and application of section 18.5.1 of the parties' collective agreement is a violation of EERA section 3540.

If you have legal authority suggesting that the foregoing approach is incorrect, please provide such authority by letter within the timeline indicated below.. If there are any factual inaccuracies in this letter or any additional facts which would correct the deficiencies explained above, please amend the charge accordingly. The amended charge should be prepared on a standard PERB unfair practice charge form clearly labeled First

Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before January 3. 1985, I shall dismiss your charge. If you have any questions on how to proceed, please call me at (916) 323-8015.

Sincerely yours.

Jorge León
Staff Attorney

JL:mn