STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

DIANE BENNETT ET AL., Charging Parties, v. SAN FRANCISCO UNIFIED SCHOOL DISTRICT, Respondent.	)	Case No. SF-CE-926 PERB Decision No. 502 April 17, 1985
DIANE BENNETT ET AL., Charging Parties, v. SAN FRANCISCO CLASSROOM TEACHERS ASSOCIATION, CTA/NEA, Respondent.	)	Case No. SF-CO-254

Appearances; Van Bourg, Allen, Weinberg & Roger by Stewart Weinberg for Diane Bennett et al.; Kirsten L. Zerger, Attorney for San Francisco Classroom Teachers Association, CTA/NEA.

Before Jaeger, Morgenstern and Burt, Members.

DECISION

MORGENSTERN, Member: The above-captioned cases have been consolidated and are before the Public Employment Relations Board (PERB) on appeals of dismissals of unfair practice charges. The underlying charges, filed on June 8, 1984, by Diane Bennett and other individual employees (Charging Parties) allege that the San Francisco Unified School District (District) and the San Francisco Classroom Teachers Association, CTA/NEA

(CTA), violated the Educational Employment Relations Act (EERA)[1] by adopting a contractual salary schedule provision which allegedly contravenes Education Code section 45028. We affirm the dismissal for the reason set forth below.

FACTUAL SUMMARY

The factual circumstances surrounding the instant charges mirror those that formed the basis for the unfair practice charges discussed in San Francisco Unified School District (4/17/85) PERB Decision No. 501.

In September 1983, the District and CTA negotiated an agreement which contained a salary schedule that compensates teachers for years of experience and academic attainment. Vertical steps correspond to years of experience, while horizontal classes reflect academic achievement. As each additional year of experience is acquired, a one-step advancement in salary is made within each class up to the maximum for that class. The maximum number of years of experience varies between classes. When a teacher has advanced to the highest step, additional years of experience are not credited. The contract provision in dispute here, section 18.3.2, provides as follows:

> In accordance with past practice, a member of the bargaining unit who has completed rating 11 or higher of column B-7 and

[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

> becomes eligible for B-8 shall be entitled to placement at rating 12 of column B-8.

This provision limits a teacher who advances horizontally on the salary schedule based on academic achievements to a one-step increase for experience even though the teacher has had additional years of experience not credited in the lower class but which is credited in the new column.

The gravamen of the charges rests on the claim that this provision conflicts with Education Code section 45028 because that statute mandates uniform credit for past teaching experience.[2]

The charges specifically allege that the designated representatives of the District and of CTA reached agreement on the provision on September 3, 1983. The assertion is also made that the agreement was not ratified until November and was not published and distributed until December 1983.

On July 9, 1984, the San Francisco regional attorney warned the Charging Parties that, based on the factual allegations and

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[2]Section 45028 provides, in pertinent part:

> Effective July 1, 1970, each person employed by a district in a position requiring certification qualifications except a person employed in a position requiring administrative or supervisory credentials, shall be classified on the salary schedule on the basis of uniform allowance for years of training and years of experience. Employees shall not be placed in different classifications on the schedule, nor paid different salaries, solely on the basis of the respective grade levels in which such employees serve.

the legal theories advanced, the charges would be dismissed unless amended or withdrawn. In his communication, the regional attorney indicated that, as written, he considered the charges to be untimely because they failed to allege when the parties knew of the adoption of section 18.3.2 of the contract or became aware of its contents.[3] He also examined the propriety of the contract provision in light of the Education Code's proscriptions and the July 1983 amendments to EERA, which added section 3543.2(d).[4]

On July 24, 1984, Charging Parties' attorney responded to the warning letter. He indicated that, in his view, the amended EERA provision does not apply to the instant case because the agreement reached by the exclusive representative and the

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[3]Pursuant to his investigation of the charges, the regional attorney discovered that 13 of the Charging Parties notified the District of their eligibility for placement on the next column under prior contracts. Thus, the alleged failure to credit these 13 individuals for total years of experience occurred prior to the adoption of section 18.3.2 and bears no relationship to the negotiation of the 1983-86 contract.

[4]Section 3543.2(d) provides:

> Notwithstanding Section 45028 of the Education Code, the public school employer and the exclusive representative shall, upon the request of either party, meet and negotiate regarding the payment of additional compensation based upon criteria other than years of training and years of experience. If the public school employer and the exclusive representative do not reach mutual agreement, then the provisions of Section 45028 of the Education Code shall apply.

employer did not compensate teachers based on criteria other than training and experience.

As to the statute of limitations issue, he stated that:

> It has been clearly alleged that a copy of the contract and its contents did not become known to the Charging Parties until December 1983. Therefore, a filing on June 8, 1984 is within the statute of limitations.

On July 27, 1984, the regional attorney dismissed both unfair practice charges "for the reasons stated in the July 9, 1984 warning letter."

DISCUSSION

In the appeals submitted on August 16, 1984, the Charging Parties again assert that the charges were timely filed because:

> The contract was not published and circulated until December of 1983, less than six months prior to the filing of the charge on June 8, 1984.

Although the appeals also take issue with the regional attorney's contention that the negotiated salary provision may be lawful by virtue of section 3543.2(d), we need not reach that issue today.

The instant unfair practice charges were filed on June 8, 1984. Thus, to satisfy the six-month statute of limitations requirement, the complained-of conduct must have occurred on or after December 8, 1983. The instant charges allege that, while the parties reached agreement on the salary schedule on September 3, 1983, "the agreement was not ratified until November 1983, and was not published and distributed until December 1984 . . . ." On its face, then, the charges do not

allege conduct that occurred within the statutory period, on or after December 8, 1983. For that reason, the regional attorney aptly advised in his warning letter that the charge was insufficient to state a prima facie case because it did not allege the date on which Charging Parties first knew or could have known of the adoption of section 18.3.2. Notwithstanding the warning letter, however, the Charging Parties' response again rested on their claim that "a copy of the contract and its contents did not become known to the Charging Parties until December of 1983."

Given that the charging party bears the burden of alleging a clear and concise statement of facts and conduct, the instant charges are marred by the fact that knowledge of the contract clause "in December" does not necessarily allege conduct with the statutory period. As CTA stated in its response to the appeal:

> . . . Charging Parties continued to allege only the general allegation that they did not know of the contents of Section 18.3.2 until December, 1983. If this means December 1-7, 1983, then the charge clearly falls outside the statute of limitations. If it means December 8-31, 1983, it falls within the statute.

ORDER

For the foregoing reason, we hereby DISMISS the charges in Case Nos. SF-CE-929 and SF-CO-254.

Member Burt joined in this Decision. Member Jaeger's concurrence is on p. 7.

Jaeger, Member, concurring: I join the majority in affirming the dismissal of the instant charge, but for the reasons stated in my separate concurrence in San Francisco Unified School District (1985) PERB Decision No. 501, issued jointly herewith today.