STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

JUDITH MAE GORCEY, Charging Party, v. OXNARD SCHOOL DISTRICT, Respondent.	)	Case No. LA-CE-2389 PERB Decision No. 667 May 26, 1988
JAN MARIE TRIPP, Charging Party, v. OXNARD SCHOOL DISTRICT, Respondent.	)	Case No. LA-CE-2390

Appearances; Rosenmund & Rosenmund by Michael A. Morrow for Judith Mae Gorcey and Jan Marie Tripp; Breon, Galgani, Godino & O'Donnell by David G. Miller for Oxnard School District.

Before Hesse, Chairperson; Craib and Shank, Members.

DECISION

SHANK, Member: Judith Mae Gorcey and Jan Marie Tripp (hereafter Charging Parties) appeal the dismissals of their unfair labor practice charges filed against the Oxnard School District (hereafter Respondent or District).[1]

[1]Oxnard School District (Gorcey) LA-CE-2389 and Oxnard Schoor~District (Tripp) LA-CE-2390 have been consolidated by the Board for this decision.

Charging Parties filed individual charges with the Public Employment Relations Board (PERB or Board) on May 23, 1986, alleging that Respondent violated Education Code section 45028.[2] Charging Parties further allege that Respondent failed to bargain in good faith as required by Government Code section 3543.5(c)[3] when it agreed to a salary schedule in

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[2]Education Code section 45028 states 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.

[3]The Educational Employment Relations Act (EERA or Act) is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Government Code section 3543.5(c) provides as follows:

> 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.

violation of Government Code section 3543.2(d).[4]

Charging Parties are certificated employees of the Oxnard School District and members of the Oxnard Educators Association (hereafter Association or Union). Through the 1983-84 school year, the District used a 12-step certificated salary schedule which classified teachers on the basis of a uniform salary for like years of training and years of experience consistent with Education Code section 45028. Each step of the salary schedule directly corresponded to the number of District-accepted years of teaching experience.

During collective bargaining negotiations leading up to the 1984-85 school year, the District and the Association negotiated a 10-step salary schedule which consolidated the lowest three salary steps into a single step. Thus, teachers with one, two and three years' experience were all placed on step one and paid for three years' experience. Teachers with four years' experience were placed on step two, those with five years' experience on step three, etc.

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[4]Government Code section 3543.2 states in pertinent part:

> (d) 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.

After ratification of the 10-step salary schedule, unit employees became aware that new teachers were being hired into the District and placed at the salary step corresponding to their years of experience as if the 12-step salary schedule were still in place. For example, new hires with three years of experience were being placed on salary step three while incumbent employees with three years of District experience were at salary step one. The Association and District negotiated a new salary schedule for 1985-86 providing for a reinstatement of the 12-step salary schedule and an across-the-board pay increase of 4.2 percent.

The new salary schedule further provided that incumbent teachers (i.e., those not newly hired in 1984-85) on steps one through five and step ten were advanced three steps retroactive to September 1985, which translates into a 12.6 percent pay increase. Incumbent teachers on steps six through nine and all newly hired teachers received a single step increase and a 4.2 percent pay raise. Incumbent teachers on steps six through nine were scheduled to be advanced two additional steps effective the 1986-87 school year. The advancement, however, was not retroactive.

Charging Party Judith Mae Gorcey was personally affected by the salary schedules as follows: in 1983-84 she was on step nine with nine years' experience; in 1984-85 she was on step

eight with ten years' experience, and in 1985-86 she was on step nine with eleven years' experience. Gorcey alleges she lost $2,685.00 in compensation because she received a one-step rather than a three-step increase.

Charging Party Jan Marie Tripp was personally affected by the salary schedules as follows: in 1983-84 she was on step six with six years' experience; in 1984-85 she was on step five with seven years' experience, and in 1985-86 she was on step six with eight years' experience. In 1985-86, other teachers with less experience were currently on steps six and seven receiving equal or greater pay than Tripp. Tripp alleges she lost $2,132.00 in compensation because she received a one-step rather than a three-step increase.

Charging Parties allege that the 1985-86 salary schedule violates Education Code section 45028 by classifying teachers for salary purposes on a basis other than years of training and years of experience. The regional attorney determined that the charge did not ask PERB to remedy a sole Education Code violation; rather, it raised the issue of whether the District committed the unfair labor practice of failing to bargain in good faith (Section 3543.5(c)) by negotiating a salary schedule in violation of the Education Code. The regional attorney concluded that PERB has jurisdiction to decide the instant dispute, insofar as it relates to the alleged 3543.5(c) violation of the Educational Employment Relations Act,

but does not have jurisdiction to remedy allegations of Education Code violations that are not concurrent violations of the Educational Employment Relations Act.

The regional attorney dismissed the 3543.5(c) allegation based upon her conclusion that the salary schedule at issue did not conflict with Education Code section 45028 since the schedule was negotiated pursuant to Government Code section 3543.2(d), which permits parties to negotiate salary schedules based on criteria other than years of training and years of experience, notwithstanding Education Code section 45028.

The charges also allege that the District engaged in conduct which "is expressly forbidden by Government Code section 3543.2(d)." If true, such conduct could be evidence of bad faith bargaining, an allegation over which this Board has jurisdiction.

Charging Parties raise two issues on appeal: 1) whether a portion of the 1985-86 salary schedule agreed to by the District and Respondent violates Education Code section 45028; 2) and, if so, whether Government Code section 3543.2(d) provides an exception to the uniformity requirement mandated by that Education Code section.

In opposition to the appeal, Respondent argues that: 1) PERB lacks jurisdiction over the subject matter of the charge, which specifically alleges a violation of the Education Code; 2) reference to the 3543.2(d) allegation is time-barred by the six month statute of limitations contained in section 3541.5(a)

because the original contract was agreed to in 1984, one and a half years before the charges were filed; and 3) the additional considerations of standing and due process support the regional attorney's dismissal.

DISCUSSION

This case raises two issues before the Board. First, does the PERB have jurisdiction over the subject matter of this case? Secondly, do Charging Parties have standing to assert alleged violations of Education Code section 45028 and Government Code section 3543.2(d)?

A. Jurisdiction

The regional attorney correctly found that PERB does not have jurisdiction to enforce contracts between parties or to enforce the Education Code. Government Code section 3541.5(b); California School Employees Association v. Azusa Unified School District (1984) 152 Cal.App.3d 580; 199 Cal.Rptr. 635; California School Employees Association v. Travis Unified School District (1984) 156 Cal.App.3d 242, 202 Cal.Rptr. 699; Los Angeles Unified School District (1986) PERB Decision No. 588. Where the sole violation alleged is of a mandatory Education Code provision, jurisdiction lies in the trial court and not with PERB. Wygant v. Victor Valley Joint Union High School District (1985) 168 Cal.App.3d 319; 214 Cal.Rptr. 205; Marshall v. Russo 87 Daily Journal D.A.R. 10094.

Here, Charging Parties allege that the District violated Education Code section 45028 and engaged in conduct which "is

expressly forbidden by Government Code section 3543.2(d)." Accordingly, we find jurisdiction exists to determine whether the charge states a possible unfair practice charge.

The regional attorney concluded that the negotiated salary schedule did not violate the uniformity requirement set forth in Education Code section 45028 that certificated employees be classified on the salary schedule on the basis of uniform allowance for years of training and years of experience because the salary schedule was based on "other criteria" (specifically "date of hire" and "what step an incumbent teacher was on in 1985-86"), pursuant to Government Code section 3543.2(d). While it is not clear from the limited record what facts, if any, were in dispute concerning this issue, to the extent relevant facts were contested, the regional attorney's determination was improper. Los Angeles Unified School District (Wightman) (1984) PERB Decision No. 473; San Francisco Classroom Teachers Association CTA/NEA (Bramell) (1984) PERB Decision No. 430.

Given our resolution of the standing issue, infra, it is unnecessary to comment further as to whether the charge, by alleging a violation of section 3543.2(d), states a prima facie violation of section 3543.5(c).

B. Standing

Section 3543.5(c) makes it unlawful for a public school employer to "refuse or fail to meet and negotiate in good faith

with an exclusive representative." (Emphasis added.) Moreover, section 3543.3 provides that an employer "shall meet and negotiate with and only with representatives of employee organizations selected as exclusive representatives of appropriate units upon request with regard to matters within the scope of representation." (Emphasis added.) Thus, the employer's duty to negotiate in good faith is owed only to the exclusive representative employee organization. A reciprocal obligation on the part of an employee organization is contained in section 3543.6(c); which makes it unlawful for an employee organization to "[r]efuse or fail to meet and negotiate in good faith with a public school employer. . . ." The clear purpose of the Act is to protect the integrity and stability of the bargaining process by bringing these two parties to the bargaining table with the objective of creating a written bilateral agreement.

In the instant matter, Charging Parties, as individuals, are requesting this Board to negate a specific provision of the agreement negotiated between the District and Union. We conclude that where either an individual employee or nonexclusive employee organization alleges that the employer has failed to fulfill its statutory duty to bargain in good faith, the collective bargaining process is, of necessity, interfered with.

In so holding, we expressly overrule South San Francisco Unified School District (1980) PERB Decision No. 112, in which

a majority of the Board, as then constituted, held that an individual employee had standing to challenge a school district's unilateral change in policy regarding his removal from a coaching position. In South San Francisco, the Board reached its conclusion by analogizing to the National Labor Relations Board (NLRB) case of Alfred M. Lewis, Inc. (1977) 229 NLRB 757 [95 LRRM 1216], enf. in part 587 F.2d 403 [99 LRRM 2841]. We first note that this Board is neither bound by NLRB precedent nor obligated to apply its principles, especially where statutory dissimilarities are apparent. Secondly, we find that, although South San Francisco is somewhat factually dissimilar,[5] the Board's reasoning was contrary to the principle of exclusivity of representation, a precept which is the cornerstone of EERA.[6]

Under the National Labor Relations Act (NLRA), the NLRB is empowered to prevent " . . . any person from engaging in any unfair labor practice. . ."as enumerated by statute. (Emphasis added.)

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[5]The individual employee in South San Francisco alleged that the District unilaterally changed its past policy without notice or an opportunity to negotiate provided to the union, in violation of 3543.5(c). Here, Charging Parties challenge the end result of negotiations. We find this factual distinction irrelevant. The instant matter and South San Francisco each involve individual employee attempts to interfere with the bargaining process.

[6]The purpose of EERA is to "promote the improvement of . . . employer-employee relations" by recognizing "one employee organization as the exclusive [bargaining] representative of the employees in an appropriate unit. . . ." (Section 3540; emphasis added.) Under the Act, we find no corresponding individual employee bargaining rights.

(29 USC sec. 160(a); NLRB Rules and Regulations section 102.9.) Moreover, the NLRA authorizes the issuance of a complaint with respect to a charge that " . . . any person has engaged in or is engaging in any such unfair labor practice, . . . " (Emphasis added.) (29 USC sec. 160(b).) The NLRB has interpreted this provision as permitting an individual employee to file a charge requiring an employer to fulfill its statutory duty to bargain with the union. (Alfred M. Lewis, supra.)

By contrast, EERA specifically limits the eligibility to file a charge to "any employee, employee organization or employer." (Sec. 3543.5(a).) In Hanford Joint Union High School District (1978) PERB Decision No. 58, this Board found that although the right to file an unfair practice charge is extended to these entities, the specific grounds which can be alleged are limited. In Hanford, the Board determined that a nonexclusive employee organization is precluded from filing a section 3543.5(c) charge because to do so would be inconsistent with the principle of exclusivity set forth in section 3540. In pertinent part, the Board reasoned that:

> . . . permitting the intercession of a minority organization raises not only the possibility of . . . mischief . . . but could very well interfere with the right of the exclusive representative to determine, in its own best judgment, those matters on which it decides to negotiate. (Hanford, supra, at p. 8.)

We find this reasoning equally applicable to such claims filed by individual employees as well as nonexclusive employee organizations. In the instant matter, Charging Parties are

attempting to require an annulment of the negotiated salary schedule. However meritorious the allegations of dissatisfied individual employees may be concerning wages, hours, or other terms and conditions of employment, such complaints are simply not cognizable as unfair practice charges under section 3543.5(c). This is true whether the charge alleges either an unlawful unilateral change or a failure or refusal of the employer to bargain in good faith.

We emphasize that nothing in our decision today shall be construed to limit the ability of employees to pursue unfair practice charges which assert individual rights under the Act.

We further note that the Charging Parties have available the alternative of seeking a remedy to the alleged violation of Education Code section 45028 through the courts.

C. Timelines

Finally, the District argues that the instant charges are barred by the six-months statute of limitations contained in Government Code section 3541.5(a) because the salary schedule giving rise to the Charging Parties' concern was legally contracted in 1984 and the charge was not filed until May 1986. The District argues that any actions taken by the District via the November 1985 agreement were only to remedy the situation created in 1984.

The regional attorney correctly points out that the charges complain only of the November 1985 agreement, ratified by the

parties on November 26, 1985. The filing of the charges on May 23, 1986 falls clearly within the six-months statutory period. The District's contention on this point is without merit.

ORDER

Based on the foregoing, the charges in Case Numbers LA-CE-2389 and LA-CE-2390 are hereby DISMISSED.

Chairperson Hesse and Member Craib joined in this Decision.