STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS ALLAN HANCOCK COMMUNITY COLLEGE DISTRICT CHAPTER #251,	)	
Charging Party,	)	Case No. LA-CE-2683
v.	)	PERB Decision No. 768
ALLAN HANCOCK COMMUNITY COLLEGE DISTRICT,	)	September 20, 1989
Respondent.	)	

Appearances: E. Luis Saenz, Attorney, for California School Employees Association and its Allan Hancock Community College District Chapter #251; Liebert, Cassidy & Frierson by Jeffrey Sloan, Attorney, for Allan Hancock Community College District.

Before Hesse, Chairperson; Porter and Shank, Members.

DECISION

HESSE, Chairperson: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the California School Employees Association and its Chapter #251 (CSEA) of the Board agent's dismissal, attached hereto, of its charge that the Allan Hancock Community College District (District) violated section 3543.5(c) and, derivatively, (a) and (b) of the Educational Employment Relations Act (EERA or Act). We have reviewed the dismissal and, finding it free of prejudicial error, adopt it as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. LA-CE-2683 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Porter and Shank joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
177 Post Street Suite 900
San Francisco. CA 94106-4737
(415)557-1350

April 14,1988

Doyle B. Newell
Director Research/Negotiations
CSEA & its Allan Hancock Community
College, Chapter #251
2045 Lundy Avenue
San Jose, CA 95131

George E. Howard, President
Allan Handock Joint Community
College District
800 South College Drive
Santa Maria, CA 93454

Be: REFUSAL TO ISSUE COMPLAINT AND DISMISSAL OF UNFAIR PRACTICE CHARGE
California School Employees Association and its Allan Hancock Community College, Chapter #251 v. Allan Hancock Community College District, Unfair Practice Charge No. LA-CE-2683

Dear Parties:

Pursuant to Public Employment Relations Board (PERB) Regulation section 32730, a complaint will not be issued in the above-referenced case and the pending charge is hereby dismissed because it fails to allege facts sufficient to state a prima facie violation of the Educational Employment Relations Act (EERA).[1] The reasoning which underlies this decision follows.

On December 10, 1987 the California School Employees Association and Allan Hancock Community College Chapter #251 (CSEA) filed an unfair practice charge against the Allan Hancock Community College District (District) alleging violation of EERA section 3543.5(c) and derivatively sections (a) and (b). Mare specifically, CSEA alleges that the District refused to bargain in good faith When it placed Ms. Ruth Malvarose in a new classification entitled Fine Arts Assistant, Range 13.

On March 30, 1988, the regional attorney wrote to Doyle B. Newell, representative of the Association and explained that the charge failed to state a prima facie violation of EERA section 3543.5 (c) and derivatively sections 3543.5 (a) and (b). The letter concluded that, unless the charge was amended or withdrawn by April 11 1988, the allegations would be dismissed. The letter is attached and incorporated by reference as though set forth in full.

[1]References to the EERA are to Government Code sections 3540 et seq. PERB Regulations are codified at California Administrative Code, Title 8.

On April 11, 1988, PERB received a letter from Attorney Luis Saenz, representative of the Association. The letter, dated April 7, 1988, argues that: the exclusive representative has a statutory right to negotiate the effects of the employer's decision to reclassify a bargaining unit position (Alum Bock Union Elementary School District (1983) PERB Decision No. 322.); an exclusive representative may waive that statutory right by clear and unmistakeable contract language; but, no subsection of Article 18 of the parties' collective bargaining agreement suggests that the Association waived, by clear and unmistakable language, its statutory right to negotiate the effects of the District's decision to reclassify bargaining unit positions.

In Newman-Crows landing Unified School District (1982) PERB Decision No. 223, the Board held that an exclusive representative alleging that the employer refused to bargain "effects" must allege that it signified to the employer its desire to negotiate the effects of the employer's decision in order to set forth a violation of EERA, section 3543.5 (c). The request may consist of a "general notice of interest in the effects of the ... decision".

Charging Party has attached two exhibits to the Unfair Practice Charge which consist of requests to bargain the employer's decision to reclassify Ms. Malvarose's position. On October 12, 1987, Ms. Ida Richards, President of the Association, directed a letter to Mr. Dennis Bethke, Director of Personnel stating:

> CSEA demands to negotiate the wages, hours and working conditions of this position. (Exhibit 4.)

On November 4, 1987, Mr. Doyle Newell, the Association's Director of Research and Negotiations, wrote to Mr. Bethke stating:

> In response to the District's proposal set forth in the memorandum dated October 14, 1987, CSEA specifically demands to bargain on the "fine Arts Position Reclassification." (Exhibit 6.)

Mr. Newell attached a three-part negotiating proposal to his letter of November 4, 1987. It proposes that:- the salary level of other secretarial classifications be increased; the increases be retroactive to the first date on which the District created the Fine Arts Assistance classification; and, the positions in the Secretarial Clerical and related classes be assigned a 37.5 work week.

The letter sent to PERB by Attorney Saenz, dated April 7, 1988, does not cure the defects of the charge. Charging Party has neither alleged facts nor provided information which suggest that it signified to the District, even in general terms, its interest in negotiating the effects of the District's reclassification decision and that the District failed/refused to negotiate.

Accordingly, for the reasons stated in this letter as well as that dated March 30, 1988, described above, Charging Party has failed to allege a prima facie violation of EERA section 3543.5 (c). The allegations are dismissed. No Complaint will issue.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, 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 (California Administrative Code, title 8, section 32635(a)). To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing (section 32135). Code of Civil Procedure section 1013 shall apply. 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 copies of a statement in opposition within twenty 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 each copy of a document served upon a party or filed with the Board itself. (See section 32140 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 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.

Sincerely,

John Spittler
Acting General Counsel

By

PETER HABERFELD)
Regional Attorney

Attachment

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
177 Post Street, Suite 900
San Francisco, CA 94108-4737
(413)557-1350

March 30, 1988

Doyle B. Newell
Director Research/Negotiations
CSEA & its Allan Hancock Community
College, Chapter #251
2045 Lundy Avenue
San Jose, CA 95131

Re: CSCA, Chapter #251 v. Allan Hancock Community College District, Unfair Practice Charge No. LA-CE-2683

Dear Mr. Newell:

On December 10, 1987 the California School Employees Association and Allan Hancock Community College Chapter #251 (CSEA) filed an unfair practice charge against the Allan Hancock Community College District (District) alleging violation of EERA section 3543.5(c) and derivatively sections (a) and (b). More specifically, CSEA alleges that the District refused to bargain in good faith when it placed Ms. Ruth Malvarose in a new classification entitled Fine Arts Assistant, Range 13.

Allegations of the Charge:

The following facts are not in dispute. Ms. Malvarose notified the District that she was performing duties in addition to those contained in the job description of her position, Faculty Secretary. She requested that her position be considered for reclassification.

Personnel Services Director Dennis L. Bethke concurred in Ms. Malvarose's request. He developed a classification entitled Fine Arts Assistant and decided to compensate her in the new position at range 13 of the salary schedule.

On September 24, 1987, Bethke informed Ida Richards, President of the CSEA chapter, of his decision and solicited the organization's input. The Bethke letter stated that District was presenting the information to CSEA in accordance with the District's obligation under Article 18, section 18.3 of the

parties' collective bargaining agreement. That provision states:

> CSEA shall be notified of all requests for reclassification. CSEA shall have input in the study and shall be consulted with regard to the finding prior to any implementation of the reclassification.

On October 2, 1987, Ms. Richards responded by letter demanding to negotiate the wages, hours and working conditions of the new position. She stated that when the position is put in a newly created classification, the District must do more than "consult" about the change. Section 18.3, according to her view, only applies when a "reclassification" takes place. CSEA uses that term to describe placing a position in a pre-existing classification.

The terms "classification" and "reclassification" are defined in the contract. Section 18.6.1 states:

> Classification means that each position in the classified service shall have a designated title, a regular minimum number of assigned hours per day, days per week, and the months per year, a specific statement of the duties required to be performed by the employees in each such position, and the regular monthly salary range for each such position. (Cal.Ed Code section 88001).

Section 18.6.3 states:

> Reclassification means the upgrading of a position to a higher classification as a result of the gradual increase of the duties being performed by the incumbent in such position. (Cal.Ed Code section 88001).

On October 9, 1987, Bethke replied to Richards. He stated that Ms. Malvarose will be placed in "working-out-of-classification status effective October 1, 1987. Also, she will be working a 37-hour work week and therefore will receive vacation and sick leave accordingly. Bethke cited Article 9 which allows the District to assign hours on a temporary basis.

On October 12, 1987, Ms Richards wrote to Bethke invoking Article 18, section 18.7, as authority for CSEA's insistence

that the District negotiate concerning the new classification, Richards asserted that section 18.7 applies because the District is creating a new classification for Ms. Malvarose. Section 18.7 states:

> New classifications created or positions added to classes shall be subject to negotiation between the District and the CSCA to determine if they are to be included in the bargaining unit. Disputed cases shall be submitted to the PERB and shall not be subjected to the grievance procedures contained in this contract.

On October 14, 1987, Bethke replied to Richards conceding that section 18.7 of the contract requires the District to negotiate concerning new classifications, but pointing out that the obligation is limited to negotiating a specific issue: whether the newly created position is to be included in the bargaining unit. Bethke continued by stating that the District agrees that the Fine Arts Assistant position should be in the bargaining unit and therefore there is nothing to bargain about.

On November 4, 1987, CSEA representative Doyle Newell, wrote to Mr. Bethke asserting CSEA's position that it has a statutory right to negotiate the wages, hours and terms of conditions of employment of all reclassifications. He cited, as authority, PERB's decision in California School Employees Association v. Alum Rock Union Elementary School District (1983) PERB decision No. 322.

The Newell letter (exhibit 6) had attached to it a negotiating proposal submitted by CSEA to the District. It proposes that the entire secretarial class of positions receive an upward adjustment of four ranges on the current salary schedule; the salary adjustment be retroactive to the date on which Ms. Malvarose's position was reclassified; and, all newly created positions in the Secretarial, Clerical and related classes be assigned a 37.5 hour work week.

Violations Alleged:

CSEA charges that the District: (1) unilaterally reclassified the Faculty Secretary II position to Fine Arts Assistant in violation of Government Code section 3543.5 (c)

and derivatively sections (a) and (b); (2) violated the requirement contained in Section 18.3 to consult with CSEA when it reclassified Ms. Malvarose allegedly on October 1, 1987; (3) violated the requirement contained in section 18.7 to negotiate with CSEA when it refused to negotiate on or reduce to writing any agreement between CSEA and the District "which went beyond the mere inclusion of the Fine Arts Assistance position from the present bargaining unit represented by CSEA;" and, (4) refused to negotiate on any of the proposals which have been attached by Charging Party to its Exhibit 6.

Applicable Legal Principles:

In determining whether a party has violated section 3543.5(c) of EERA, the PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. Stockton Unified School District (1980) PERB Decision No. 143. Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented prior to the employer notifying the exclusive representative and giving it an opportunity to request negotiations. Walnut Valley Unified School District (1981) PERB Decision No. 160; Grant Joint Unified High School District (1982) PERB Decision No. 196.

In Grant, supra, PERB held that conduct which breaches a collective bargaining agreement can also violate the duty to bargain contained in EERA only if the employer's conduct announces a "new policy of general application or continuing effect." Otherwise, though remediable through the courts or arbitration, the conduct does not violate the Act.

In Alum Rock, supra, PERB held that a District employer is obligated to negotiate regarding: (1) the transfer of work from one classification to another; (2) the retitling of classifications; (3) all matters related to salaries, including the salary ranges to which newly created classifications are assigned; (4) the reassignment of employees from existing classifications to different or newly created classifications; (5) the allocation of positions to classifications; and, (6) the effects, if any,

on terms and conditions of employment of those classification decisions. (Slip Op. at p. 23.)

Analysis:

Charging party has failed to allege facts setting forth elements of a prima facie violation of EERA section 3543.5(c) and derivatively sections (a) and (b). The allegations do not suggest that a policy existed previously which entitled CSEA to negotiate with the District prior to the latter's implementation of a reclassification decision.

The previous policy is set forth unambiguously in Article 18. First, the definition of "reclassification" contained in Section 18.6.3 includes upgrading to both existing and new classifications. Second, section 18.3 requires the District to consult, rather than negotiate, prior to its implementation of the reclassification decision. The requirement applies whether the position is being upgraded to a new or existing classification. Third, the previous policy is partially embodied in Section 18.7. It requires that the parties negotiate whether the new classification is to be included in the bargaining unit. That issue was not contested here: both parties agreed that Ms. Malvarose's position remain in the unit.

Charging Party argues that the term "implementation" in Section 18.3 means something less than announcing a reclassified position that has: a title; a regular minimum number of assigned hours per day, days per week, months per year; a specific statement of the duties required to be performed by the employee in the new position; and, the regular monthly salary range for the position. In its view, at least the salary range remained to be established during the implementation phase.

This argument is not persuasive. Despite requests from the regional attorney, CSEA has not alleged any facts or presented any information regarding the text of the contract, bargaining history or previous practice which suggests that the language of the Article 18, quoted above, has been interpreted in a manner consistent with Charging Party's arguments. Without allegations or evidence suggesting that a previous policy existed which required the District to negotiate all of part of its decision to reclassify a position, the charge fails to allege a unilateral change of a policy. CSEA has also alleged that the District violated section 18.3 of the collective

bargaining agreement when it allegedly implemented unilaterally the reclassification of Ms. Malvarose on October 1, 1987. By letter, dated February 23, 1988, Mr. Doyle Newell, representative of CSEA, informed the regional attorney that her reclassification was permanent as of October 1 and, further, that the implementation preceded provision by the District to CSEA of notice and opportunity to consult and/or bargain. However, CSEA does not dispute the statements contained in its Exhibit 3, attached to the charge. That exhibit consists of a letter from Personnel Services Director Bethke, dated October 9, 1987, which explains that Ms. Malvarose, pending permanent reclassification,

> will be placed in working-out-of-classification status effective October 1, 1987 . . . .

Thus, CSEA has presented evidence that the change in Ms. Malvarose's pay on October 1, 1987 did not reflect permanent implementation of the decision to reclassify her position. The allegations do not suggest that the reclassification was a fait accompli prior to the opportunity provided by the District to consult regarding its decision to reclassify Ms. Malvarose.

Charging Party also alleges that the District refused to negotiate or reduce to writing any agreement between CSEA and the District "which went beyond the mere inclusion of the Fine Arts Assistant position in the unit." CSEA argues here that Section 18.7 imposes an obligation on the District beyond negotiating whether the new classification belongs in the unit.

CSEA's argument is not persuasive. As discussed above. Section 18.7 is unambiguous. It only requires that the parties negotiate whether to include the new position in the bargaining unit.

Finally, CSEA alleges that the District refused to negotiate concerning the three proposals attached to exhibit 6, described above, and that this refusal constitutes violation of its obligation to bargain concerning mandatory subjects.

This argument is not persuasive. The three proposals concern the reclassification of positions in addition to the Fine Arts Assistant position. As discussed above, allegations and evidence presented by CSEA suggest that the contract contains a policy which merely requires the District to consult, not negotiate, regarding the District's reclassification decision.

For these reasons, the charge as presently written does not state a prima facie violation of EERA sections 3543.5(c) and derivatively (a) and (b). If you feel that 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 April 11, 1988, I shall dismiss your charge. If you have any questions on how to proceed, please call me at (415) 557-1350.

Sincerely,

PETER HABERFELD
Regional Attorney