STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

TEMPLE CITY EDUCATION ASSOCIATION, CTA/NEA, Charging Party,	)	Case No. LA-CE-2886
V.	)	PERB Decision No. 814
TEMPLE CITY UNIFIED SCHOOL DISTRICT, Respondent.	)	June 13, 1990

Appearances: California Teachers Association by Charles R. Gustafson, Attorney, for Temple City Education Association, CTA/NEA; Wagner, Sisneros & Wagner by John J. Wagner, Attorney, for Temple City Unified School District.

Before Hesse, Chairperson; Shank and Camilli, Members.

DECISION

SHANK, Member: This case is before the Public Employment Relations Board (Board) on an appeal filed by the Temple City Education Association, CTA/NEA (Association) of a Board agent's dismissal of its unfair practice charge. The Association contends that the Temple City Unified School District (District) violated the Educational Employment Relations Act (EERA), section 3543.5(b), (c), and (e),[1] by unilaterally omitting or eliminating

[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3543.5(b), (c), and (e) states:

> It shall be unlawful for a public school employer to:
>
> . . . . . .
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.

unit members' rights to select how their fringe benefit allocations would be spent. We have reviewed the entire record, including the Association's appeal from the dismissal and the District's response thereto, and reverse the dismissal of the unfair practice charge for the reasons set forth below.

FACTUAL BACKGROUND

The unfair practice charge contains the following factual allegations. The Association is the exclusive representative of a unit of the District's certificated employees. The Association and the District were parties to a collective bargaining agreement effective November 1, 1986 through June 30, 1989. Pursuant to a reopener provision in the agreement, in June 1988 the parties commenced negotiations on several contract articles, including Article XV which pertained to fringe benefits. The negotiations resulted in an impasse declaration on August 31, 1988. The parties subsequently participated in mediation and factfinding, and a factfinding report was issued on February 21, 1989.[2]

> (c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.
>
> . . . . . .
>
> (e) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

[2]The factfinding report is not contained in the record.

The parties met twice after receiving the factfinding report and, on April 20, 1989, the District presented what it called a "last, best and final offer," which included an increase in the District's fringe benefit contribution from $3,000 to 3,500, retroactive to October 1, 1988.[3] On April 25, 1989, the District unilaterally implemented its last, best and final offer in a revised Article XV which reads as follows:

ARTICLE XV

HEALTH AND WELFARE BENEFITS

> 1. The District agrees to contribute $3500.00 to each unit member's health and welfare benefits, effective October 1, 1988.
>
> 2. The benefits available to unit members shall be included in Appendix A, dated April 20, 1989, of this Agreement.

Appendix A, herein referred to as the "benefit selection sheet," dated April 20, 1989,[4] contained the following language:

> Listed below are the health and welfare plans. The District will contribute $350.00 tenthly toward the plans listed below. Any amount incurred beyond the District contribution will be payroll deducted. Please indicate the benefits you select by checking the appropriate box and enter the amount in the contribution column. Please

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[3]There is nothing in the record to indicate that, in bargaining proposals regarding fringe benefits, the parties discussed changing the method by which the employer could allocate expenditure of any increase in fringe benefits.

[4]For the record, it should be noted that the sheet is actually titled "Temple City Unified School District Certified Employees Benefit Selection 1988-1989," and the April 20, 1989 date appears to have been added, in different type, later. It appears the sheet is the same sheet used in the 1988-89 school year, although there is nothing in the record that explicitly states this to be the case.

> check the box in the right hand margin if there is a change from last year's coverage.
>
> . . . . . .
>
> I authorize Temple City Unified School District to deduct any payroll deductions listed above from my salary warrant. If any changes are made regarding the health and welfare benefits from the previous year, I understand that proper enrollment forms must be obtained and returned to the Personnel Office by September 12, 1988.[5]

On May 17, 1989, the District sent the following memo to the certificated unit members:

> On April 25, 1989 the Temple City Unified School District Board of Education took action to increase each certificated unit member's fringe benefit allocation by $500. This action was retroactive to October 1, 1988.
>
> As a result of the Board's action, those unit members who have had money deducted from their paychecks will be reimbursed for previous deductions for up to $50 per month. Any dollars remaining after this adjustment will be placed in the individual's flexible spending account.
>
> For all unit members who currently have a flexible spending account, the District will add an additional $50 per month to that account, retroactive to October 1, 1988.

On May 23, 1989, unit member Mary Douglass (Douglass) responded by memo which stated, in pertinent part, that:

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[5]Although the Board agent dismissed the case based on the Association's failure to return the "proper enrollment forms," neither the Association nor the Board agent directly addressed the factual question of how a form, dated April 20, 1989, could require employees to take any action prior to September 12, 1988, with respect to funds not then available. Resolution of this factual question, however, is not necessary to the disposition of this case and is more appropriately reached after a hearing.

> I do not want my $500 in fringe benefits recently granted by the Board of Education to go into my flexible spending account.
>
> When I signed up for my benefits in September 1988 I requested that when and if a settlement was reached which would increase my benefits I wanted the surplus funds to go into my new insurance policy that pays benefits upon retirement.
>
> . . . . . .
>
> . . . I feel that denial of my right to choose where my benefit money should go is a violation of our contract.

Other employees made similar requests regarding disposition of the surplus funds to which they became entitled by virtue of the District's increase in fringe benefits.[6]

On May 31, 1989, the District restated its position that any remaining funds could only be added to the "flexible spending accounts."

On June 12, 1989, Douglass filed a grievance alleging as follows:

> On April 25, 1989, the Board of Education unilaterally increased the District's fringe benefit contribution by five hundred dollars ($500). I have been denied my contractual right to apply some or all of those funds at my discretion toward one of the health and welfare options listed in Appendix A of the Collective Bargaining Agreement.

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[6]The Association alleges, and the District does not dispute, that employees who started employment with the District after September 1988 were allowed to make choices from the fringe benefit selection sheet, including the selection of life insurance. The District apparently contends employees like Mary Douglass, who were employed prior to September 1988, are not entitled to make that choice.

On July 14, 1989, the District responded to the grievance by letter as follows:

> On April 25, 1989, the Temple City Unified School District Board of Education ended negotiations for the 1989-90 school year by unilaterally adopting its last, best, and final offer on Articles VI, VIII, XIV, and XV.
>
> This unilateral action caused those Articles to become part of Board Policy, which removed the four articles from the current contract between the Temple City Unified School District and Temple City Education Association.
>
> Since Article XV is no longer a part of the current contract, and thus is not grievable, your grievance regarding this matter will not be processed.[7]

BOARD AGENT'S DECISION

The Board agent dismissed the charge for two reasons. First, he found that the employee's right to select his or her benefits was qualified by the language in the benefit selection sheet stating that: (1) if "any changes are made . . . proper enrollment forms must be obtained and returned to the Personnel Office by September 12, 1988"; (2) unit member Douglass was seeking a change in her benefits; and (3) she failed to return the proper enrollment forms by September 12, 1988. He then concluded:

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[7]In Temple City Education Association v. Temple City Unified School District (1989) Order No. Ad-190, this Board found that an earlier charge filed by the Association concerning Article XV of the same collective bargaining agreement was not deferrable to binding arbitration under the deferral doctrine set forth in Lake Elsinore School District (1987) PERB Decision No. 646.

> It appears that in September, 1988, she had requested that the change be made "when and if a settlement was reached which would increase my benefits," but there is no allegation that under the District's policy this request was equivalent to returning the proper enrollment forms.

Thus, the Board agent found that the employee's right to select fringe benefits was conditioned upon his or her completion of- the "proper enrollment forms" and that, in rejecting Douglass' benefit selection based upon her failure to complete said forms, the District was not changing policy but enforcing existing policy.

Second, the Board agent found that, even if Douglass had returned the proper enrollment forms by September 12, 1988, there was no allegation or evidence that the District changed its policy in a way that had a generalized effect or continuing impact upon the terms and conditions of employment of bargaining unit members.

EXCEPTIONS

The Association excepts to the Board agent's decision on two grounds. First, the Association argues that the Board agent's decision was based on mistake of fact as to the meaning of the language in the benefit selection sheet. In its exceptions, the Association contends:

> The language from the "Benefit Selection Sheet" refers to the forms of the insurance companies which must be completed upon initial enrollment in any of the health insurance plans. Once an employee has completed the insurance company forms for initial enrollment in a health benefit plan,

> coverage under the plan is established. These enrollment forms do not affect the employees [sic] right to determine how the District's fringe benefit contribution will be allocated among the plans in which the employee is enrolled.
> (Emphasis in original; p. 6.)

The District's response to the Association's appeal of the dismissal consists, in its entirety, of the Board agent's warning and dismissal letters and does not specifically respond to the Association's interpretation of the benefit selection sheet language.[8] We do not find that a determination as to the meaning of the benefit selection sheet language is essential to the disposition of this case. The only issue here is whether sufficient facts[9] were alleged to state a prima facie case of unlawful unilateral change. To state such a prima facie case, the Association must allege facts indicating that action was taken which changed the status quo regarding a matter within the scope of representation without giving the exclusive representative notice and opportunity to bargain; or, if

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[8]Although this alleged mistake of fact appeared in the Board agent's warning letter, the Association failed to set forth its own interpretation in its first amended charge. Had the Association done so, the Board agent would have had to presume the truth of the Association's interpretation and perhaps would have reached a different result. (See footnote 9, infra.) Since we must make our decision based on the contents of the charge, and since the Association's interpretation is not set forth therein, we do not base our decision upon the Association's interpretation of the disputed language.

[9]In reviewing the dismissal of a charge for failure to state a prima facie case, the allegations in the charge are presumed to be true. (San Juan Unified School District (1977) EERB Decision No. 12.) (Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board.)

negotiations have occurred, that the matter was not negotiated to agreement or through impasse prior to implementation of the change. (San Francisco Community College District (1979) PERB Decision No. 105.) Furthermore, to be unlawful, the change must amount to a change in policy having either a generalized effect or a continuing impact on the matter within scope of representation. (Grant Joint Union High School District (1982) PERB Decision No. 196.)

In the instant case, the Association has alleged, in effect, that, prior to May 17, 1989, all certificated unit members had the right to determine how the District's fringe benefit contribution was allocated among the benefit plans in which the individual was enrolled. The Association has further alleged that on or about May 17, the District unilaterally limited or eliminated the unit members' right to select how their fringe benefit allocations would be spent. According to the Association, under the District's policy, implemented in May 1989, those employees employed after September 1988 were entitled to allocate the fringe benefit increase to the benefit of their choice. Those employees who were employed prior to September 1988, and who had been funding their fringe benefit selections through payroll deductions, were entitled to a refund of those deductions, retroactive to October 1988. Those employees employed prior to September 1988, and who were not already taking payroll deductions (as was the case with Douglass) were no longer entitled to choose where to allocate the retroactive fringe

benefit increase implemented in May 1989, but were being forced to allocate the increase to a "flexible spending account." The Association adequately alleges, for purposes of issuance of a complaint, that this forced allocation constituted a unilateral change in past practice and/or a violation of the contract.[10]

The Association also excepts to the Board agent's finding that, assuming there was a change in policy, the policy did not have a generalized effect or continuing impact upon the terms and conditions of employment of bargaining unit members. The Association did allege that Douglass and other unit members were disadvantaged by the District's change in policy. The employees employed prior to September 1988 did not receive the full benefit of the District's increase in the fringe benefit allocation as they were unable to apply the District's contribution to the insurance benefits of their choice. The alleged change in policy affects not only those employees individually disadvantaged, but also constitutes a new status quo as to the unit members' rights with regard to allocation of health and welfare benefits. Thus, we would find that the alleged change in policy does have a generalized impact and continuing affect on bargaining unit members.

For the reasons stated above, we find that the charge states a prima facie case of unlawful unilateral change.

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[10]See footnote 7, supra.

ORDER

On the basis of the foregoing decision and on the record as a whole, it is hereby ORDERED that the Board agent's dismissal of the charge in Case No. LA-CE-2886 is REVERSED and the charge is REMANDED to the General Counsel for issuance of a complaint and appropriate further proceedings.

Chairperson Hesse and Member Camilli joined in this Decision.