

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



MADERA UNIFIED TEACHERS)
ASSOCIATION, CTA/NEA,)
)
Charging Party,) Case No. S-CE-1299
)
v.) PERB Decision No. 817
)
MADERA UNIFIED SCHOOL DISTRICT,) June 19, 1990
)
Respondent.)
_____)

Appearance: California Teachers Association by Diane Ross,
Attorney, for Madera Unified Teachers Association, CTA/NEA.

Before Shank, Camilli and Cunningham, Members.

DECISION AND ORDER

CUNNINGHAM, Member: This case is before the Public
Employment Relations Board (Board) on appeal by the Madera
Unified Teachers Association, CTA/NEA of a Board agent's
dismissal (attached hereto) of its charge that the Madera Unified
School District violated section 3543.5 of the Educational
Employment Relations Act. (Gov. Code, sec. 3540 et seq.) We
have reviewed the dismissal and, finding it free of prejudicial
error, adopt it as the decision of the Board itself.

The unfair practice charge in Case No. S-CE-1299 is hereby
DISMISSED WITHOUT LEAVE TO AMEND.

Members Shank and Camilli joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916) 322-3198



October 18, 1989

Diane Ross
California Teachers Association
P.O. Box 921
Burlingame, CA 94011-0921

Re: Madera Unified Teachers Association v. Madera Unified School District, Unfair Practice Charge No. S-CE-1299

Dear Ms. Ross:

On September 18, 1989, the Madera Unified Teachers Association (Association) filed an unfair practice charge against the Madera Unified School District (District) alleging a violation of section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA). Specifically, you charged that the District has unilaterally determined to terminate the health insurance agreed upon in the collective bargaining agreement between the parties, which expired June 30, 1989.

I indicated to you in my attached letter dated October 2, 1989 that the above-referenced charge did not state a prima facie case. You were advised that if there were any factual inaccuracies or additional facts that would correct the deficiencies explained in that letter, you should amend the charge accordingly. You were further advised that unless you amended the charge to state a prima facie case, or withdrew it prior to October 10, 1989, the charge would be dismissed.

I have not received either a request for withdrawal or an amended charge. I am therefore dismissing the charge based on the facts and reasons contained in my October 2, 1989 letter.

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 (California Administrative Code, title 8, 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 (California Administrative Code, title 8, 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 California Administrative Code, title 8, 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 (California Administrative Code, title 8, 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,

Bernard McMonigle
Staff Attorney

Attachment

cc: Robert Stroup

PUBLIC EMPLOYMENT RELATIONS BOARD



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1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916) 322-3198



October 2, 1989

Diane Ross
California Teachers Association
P.O. Box 921
Burlingame, CA 94011-0921

Re: Madera Unified Teachers Association v. Madera Unified School District, Unfair Practice Charge No. S-CE-1299
WARNING LETTER.

Dear Ms. Ross:

On September 18, 1989, the Madera Unified Teachers Association (Association) filed an unfair practice charge against the Madera Unified School District (District) alleging a violation of section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA). Specifically, you charged that the District has unilaterally determined to terminate the health insurance agreed upon in the collective bargaining agreement between the parties, which expired June 30, 1989.

Information supplied with your charge reveals the following. The parties were signatory to a collective bargaining agreement which expired June 30, 1989. Article XXII of that agreement is titled, "Salary and Fringe Benefits." Section 22.4 calls for health insurance through the Central Valley Trust. Article VIII contains a grievance procedure which permits "Salary and Fringe" grievances to be filed by the Association. The procedure ends in binding arbitration. On August 22, 1989, the District's Board of Trustees voted to terminate the health insurance contract with the Central Valley Trust. The plan is to be terminated by a 30-day notice of termination to be given after September 28, 1989. The Association and the District are bargaining over a new contract but no agreement has been reached.

Section 3541.5(a)(2) of the Educational Employment Relations Act (EERA) states, in pertinent part, that PERB,

shall not . . . issue a complaint against conduct also prohibited by the provisions of the . . . [collective bargaining agreement in effect] between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted either by settlement or binding arbitration.

In Lake Elsinore School District, (1987) PERB Decision No. 646, PERB held that this section established a jurisdictional rule requiring that a charge be dismissed and deferred if: (1) the grievance machinery of the agreement covers the matter at issue and culminates in binding arbitration; and, (2) the conduct complained of in the unfair practice charge is prohibited by the provisions of the agreement between the parties. PERB Rule 32620(b)(5) (California Administrative Code title 8, section 32620(b)(5)) also requires the investigating board agent to dismiss a charge where the allegations are properly deferred to binding arbitration.

These standards are met with respect to this case. First, the grievance machinery of the agreement/MOU covers the dispute raised by the unfair practice charge and culminates in binding arbitration. Second, the conduct complained of in this charge, the District's decision to terminate the agreed upon health insurance, is arguably prohibited by section 22.4 of the MOU.

In Anaheim City School District (1983) PERB Decision No. 364, PERB held that unless the parties to a contract expressly indicate a contrary intention, it is presumed that an arbitrator will resolve all disputes "arguably arising under the contract." In that case, the Board found that the District had committed an unfair practice by refusing to arbitrate a dispute that involved unilateral acts occurring subsequent to expiration of the contract.

In this case the District's alleged violation of the contract also occurred subsequent to the expiration of the contract. Nothing in the parties' expired contract indicates that an arbitrator should not resolve all disputes "arguably arising under the contract," including those involving fringe benefits. Nor have the parties argued that fringe benefits are not subject to the grievance and arbitration procedure.

Accordingly, this charge must be deferred to arbitration and will be dismissed. Such dismissal is without prejudice to the Charging Party's right, after arbitration, to seek a repugnancy review by PERB of the arbitrator's decision under the Dry Creek criteria. See PERB Regulation 32661 (California Administrative Code, title 8, section 32661); Los Angeles Unified School District (1982) PERB Decision No. 218; Dry Creek Joint Elementary School District; (1980) PERB Order No. Ad-81a.

If you feel that there are any factual inaccuracies in this letter or any additional facts which would require a different conclusion than the one explained above, please amend the charge accordingly. This 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 October 10, 1989, I shall dismiss your charge without leave to amend. If you have any questions on how to proceed, please call me at (916) 322-3198.

Sincerely,

Bernard McMonigle
Staff Attorney