STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ASSOCIATED CHINO TEACHERS, CTA/NEA,	)	
Charging Party,	)	Case No. LA-CE-3922
v.	)	PERB Decision No. 1326
CHINO VALLEY UNIFIED SCHOOL DISTRICT,	)	April 14, 1999
Respondent.	)	

Appearance; Schwartz, Steinsapir, Dohrmann & Sommers by Stuart Libicki, Attorney, for Associated Chino Teachers, CTA/NEA.

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

CAFFREY, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Associated Chino Teachers, CTA/NEA (ACT) of a Board agent's partial dismissal of its unfair practice charge. ACT alleges that the Chino Valley Unified School District (District) breached its duty to bargain in good faith regarding the impact and implementation of year-round school for the 1998-1999 school year and unilaterally modified agreements in violation of section 3543.5(c) of the Educational Employment Relations Act (EERA).[1]

[1]EERA is codified at Government Code section 3540 et seq. Section 3543.5 states, in pertinent part:

> It shall be unlawful for a public school employer to do any of the following:
>
> (c) Refuse or fail to meet and negotiate in

The Board has reviewed the entire record in this case, including the original and amended unfair practice charge, the Board agent's partial warning and dismissal letters and ACT's appeal. Based on the following discussion, the Board reverses the partial dismissal and finds that ACT has stated a prima facie case that the District breached its duty to bargain in good faith in violation of EERA.

BACKGROUND

A review of ACT's original and amended unfair practice charge reveals the following.

On January 22, 1998,[2] the District's Board of Trustees (trustees) voted to implement year-round school in four additional District schools for the 1998-1999 school year. On January 23 and February 11, ACT made written requests to bargain the impact of that implementation.

The first bargaining session originally scheduled for February 18 was cancelled because the District's lead negotiator informed ACT that he did not have the authority to negotiate for the trustees.

On March 4, when the District's lead negotiator and ACT's executive director met, the District's lead negotiator expressly stated at the beginning of the session that he had received direction from the District and the authority to sign off on contractual language. Accepting his representation of authority,

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good faith with an exclusive representative.

[2]All dates refer to 1998 unless indicated otherwise.

ACT's executive director commenced negotiations with the District. After five hours of negotiations, the parties reached tentative agreement on sixteen of nineteen pending issues, and the District's lead negotiator and ACT's executive director initialed the agreements as approved at that time. A March 12 bargaining session was cancelled by the District.

Between March 16 and 18, the District's lead negotiator informed ACT's executive director that he had direction from the District to complete negotiations regarding the three remaining issues, and they agreed to meet on March 19. There is no indication that the District at that time expressed concerns or proposed changes to the tentative agreements.

At the March 19 meeting, the District's lead negotiator presented ACT's executive director with a unilaterally revised list of the tentative agreements which had been reached at the March 4 meeting, as well as the three issues that remained unresolved. The changes had been made by the District's assistant superintendent of human resources, who was asked to join the negotiation session. The assistant superintendent of human resources stated that the changes had been made because the District's lead negotiator did not have the authority to make agreements on behalf of the District.

On March 23, the president of ACT wrote to the District's superintendent of schools requesting that he honor the agreements reached on March 4 or explain why the District would not do so.

ACT filed its original unfair practice charge on April 3,

alleging that the District violated the EERA and failed to bargain in good faith by manipulation of the authority of its lead negotiator and by memorializing certain aspects of the issues negotiated in a manner inconsistent with the language previously agreed upon by the parties. On October 5, ACT amended its charge to allege that the District violated the EERA when it unilaterally changed the language that had been initialed and agreed upon at the March 4 bargaining session.

DISCUSSION

In cases of an alleged failure or refusal to bargain in good faith, PERB typically looks to the entire course of negotiations, examining a party's outward conduct to determine whether its subjective intent was to attempt to resolve differences and reach a common ground. (Charter Oak Unified School District (1991) PERB Decision No. 873 at p. 7 (Charter Oak), citing Pajaro Valley Unified School District (1978) PERB Decision No. 51 (Pajaro Valley).) A few actions are so egregious as to be per se violations of the duty to bargain in good faith. Some unilateral changes and an outright refusal to bargain constitute examples of per se violations of this duty. In most cases, the Board examines the totality of the circumstances to determine whether a party demonstrated the subjective intent to bargain in good faith.

Under the totality of the circumstances analysis, some indicators of bad faith bargaining include: surface bargaining in which a party "goes through the motions" without a genuine

attempt to reconcile differences (Muroc Unified School District (1978) PERB Decision No. 80); evasive tactics and delay including cancelling sessions or not meeting and conferring promptly (Stockton Unified School District (1980) PERB Decision No. 143); utilizing a negotiator who does not possess sufficient bargaining authority, which delays or thwarts the bargaining process (Oakland Unified School District (1983) PERB Decision No. 326 (Oakland)); and, regressive bargaining techniques which move the parties away from agreement, such as reneging on previously reached agreements and withdrawal of previous proposals (Charter Oak). In general, The Board has held that one indicator of bad faith bargaining is insufficient to demonstrate a prima facie case of unlawful conduct. (Regents of the University of California (1985) PERB Decision No. 520-H.)

Based on a review of the original and amended charges, the Board concludes that ACT has demonstrated multiple indicators of bad faith conduct by the District sufficient to state a prima facie case of an EERA violation.

On March 19, the District presented to ACT changes it had made to the tentative agreements reached by the parties on March 4. By reneging on these tentative agreements, the District demonstrated regressive bargaining techniques, an indicator of bad faith bargaining. (Charter Oak.) When asked to explain its action, the District indicated that its lead negotiator did not have the authority to reach those tentative agreements. In this case, the parties on two occasions specifically discussed the

authority of the District's lead negotiator. These discussions culminated in the District's endorsement of its negotiator's authority. Under these circumstances, the District's subsequent revelation that it had assigned a negotiator who did not possess sufficient bargaining authority constitutes a separate indicator of bad faith bargaining. By that conduct, the District significantly delayed and thwarted the bargaining process. (Oakland.)

ACT also alleges that the District's action in altering the tentative agreements reached on March 4 constituted an unlawful unilateral change in violation of EERA. To prevail in a unilateral change case, the charging party must establish that the employer, without providing the exclusive representative with notice or the opportunity to bargain, breached or altered the parties' written agreement or established past practice concerning a matter within the scope of representation, and that the change had a generalized effect or continuing impact on the terms and conditions of employment of bargaining unit members. (Pajaro Valley at pp. 5-6; Grant Joint Union High School District (1982) PERB Decision No. 196 at p. 10 (Grant).) However, since the agreements which the District changed were tentative and had not been ratified by the trustees, they had not been implemented with regard to the terms and conditions of employment of bargaining unit members. Therefore, a change in those tentative agreements prior to their implementation does not meet the test described by the Board in Grant, and does not constitute a

separate unilateral change violation. Accordingly, that allegation by ACT is dismissed.

In summary, ACT has presented indicators of bad faith bargaining sufficient to demonstrate a prima facie case that the District's conduct breached the duty to bargain in good faith in violation of EERA section 3543.5(c).

ORDER

Based on the foregoing, the Board finds that the Associated Chino Teachers, CTA/NEA has stated a prima face case of a violation of EERA section 3543.5(c) in Case No. LA-CE-3922 and hereby orders this case REMANDED to the General Counsel for issuance of a complaint as discussed herein.

Members Dyer and Amador joined in this Decision.