

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



MODESTO TEACHERS ASSOCIATION CTA/NEA,	)	
	)	
Charging Party,	)	Case No. S-CE-402
<u>APPELLANT</u>	)	
	)	Request to Subpoena
v.	)	Board Agent
	)	
MODESTO CITY SCHOOLS AND	)	Administrative Appeal
SCHOOL DISTRICT,	)	
	)	PERB Order No. Ad-117
Respondent.	)	
	)	October 15, 1981

Appearances: Kenneth W. Burt II, Attorney for Modesto Teachers Association; Patricia W. Mills, Attorney (Breon, Galgani & Godino) for Modesto City Schools and School District.

Before Gluck, Chairperson; Jaeger and Moore, Members.

DECISION

The Modesto Teachers Association (hereafter MTA or Association) appeals a hearing officer's refusal to subpoena the chief administrative law judge of the Public Employment Relations Board (hereafter PERB or Board). The Association asserts that his testimony as to certain discussions which took place during a pre-hearing informal conference would corroborate evidence offered by its witness and therefore is essential to establish its defense against the Modesto City Schools and School District's (hereafter District) motion to dismiss.

PERB rule 32150(e) provides:<sup>1</sup>

Upon a finding of the Board itself that a Board agent or a Board document is essential to the resolution of a case and that no rational decision of the Board can be reached without such agent . . . the Board itself shall willingly produce the agent . . . if subpoenaed to do so by any party to the dispute.

MTA has not stated the factual basis for its assertion that the testimony of the agent is essential to the resolution of the case nor described the subject matter of the chief administrative law judge's expected testimony. We conclude from the District's statements supporting the request for the subpoena that the testimony would go to the settlement discussions which took place between the parties at the informal conference.

We deny charging party's request for the subpoena. The Association has not demonstrated that the agent's testimony is essential to the resolution of the Motion to Dismiss nor that a rational decision cannot be reached without the testimony. Indeed, it merely asserts that his testimony would only corroborate that which is already in the record. Because there are other witnesses from whom credibility determinations can be made, we do not view the agent's testimony as "essential."

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<sup>1</sup>PERB rules are codified at California Administrative Code, title 8, section 31000 et seq.

Moreover, public policy favoring the confidentiality of settlement discussions persuades us that it would be improper to issue the subpoena in this case.<sup>2</sup> To expose the content of settlement negotiations to the light of a public hearing may well discourage the parties from sincerely engaging in such discussions.<sup>3</sup>

The role of a Board agent in the settlement process is similar to that of a mediator in that he/she assists the parties in attempts to resolve their disputes without resort to a formal hearing. Participation in the informal conference without protection against forced disclosure of the content of discussions occurring there would defeat the very purpose of the process and the agent's participation.<sup>4</sup>

The appeal is therefore DENIED.

PER CURIAM

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<sup>2</sup>Duties of the agent presiding at the informal conference include to "Explore the possibility of and facilitate the voluntary resolution and settlement of the case through informal conferences or other means." PERB rule 32620(b)(7).

<sup>3</sup>See California Evidence Code section 1152.

<sup>4</sup>See Tomlinson of High Point, Inc. (1947) 74 NLRB 681. Also California Labor Code section 65.