

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



MT. SAN ANTONIO COMMUNITY COLLEGE DISTRICT,)	
)	
Employer,)	Case No. LA-R-676,
<u>APPELLANT,</u>)	LA-M-816
)	
and)	PERB Order No. Ad-124
)	
MT. SAN ANTONIO COLLEGE FACULTY ASSOCIATION,)	Administrative Appeal
)	
Respondent.)	December 30, 1981
)	

Appearances: William Hamilton & Associates for the Mt. San Antonio Community College District; Sandie Paisley, Attorney for the Mt. San Antonio College Faculty Association.

Before Gluck, Chairperson; Moore and Tovar, Members.

DECISION

The Mt. San Antonio Community College District (hereafter Employer or District) appeals a regional director's determination that an impasse existed in the negotiation of a new contract with the Mt. San Antonio College Faculty Association (hereafter Association). We reverse the regional director's findings.

FACTS

In May 1981, the District and the Association began their negotiations for a new collective bargaining agreement. Proposals covered a variety of terms and conditions of employment including wages, hours, class size, evaluations,

grievance procedures, term, retirement, dues and payroll deductions, recognition, and other topics typically included in such agreements.

After six sessions totaling twenty-eight hours, the Association declared that an impasse existed and, on June 19, requested the Public Employment Relations Board (hereafter PERB or Board) to so determine and appoint a mediator. The Association considered 18 separate articles of the proposed agreement to be matters over which there were "major differences" between the parties. After an investigation, the Board agent concluded that the parties were merely having difficulties in the initial stages of bargaining, found that no "real negotiations" had occurred, and declined to appoint a mediator.¹

¹Government Code section 3548 governs impasse and the appointment of mediators and states:

Either a public school employer or the exclusive representative may declare that an impasse has been reached between the parties in negotiations over matters within the scope of representation and may request the board to appoint a mediator for the purpose of assisting them in reconciling their differences and resolving the controversy on terms which are mutually acceptable. If the board determines that an impasse exists, it shall, in no event later than five working days after the receipt of a request, appoint a mediator in accordance with such rules as it shall prescribe. The mediator shall meet forthwith with the parties or their representatives, either jointly or separately, and shall take such other steps as he may deem appropriate in order to

The parties subsequently returned to the table for three more sessions for a total of ten hours but, on August 7, the Association again declared impasse and renewed its request that PERB appoint a mediator. The Association maintains that no tentative agreements had been reached and that among the issues left outstanding were remuneration, work hours, class size, evaluation, and grievance procedures. The District asserts that agreement on ground rules had been concluded.

Shortly after this renewal of the request for an impasse declaration, the parties agreed to engage in voluntary mediation and asked that the Association's request be held in abeyance. However, the voluntary mediation was of no avail in

persuade the parties to resolve their differences and effect a mutually acceptable agreement. The services of the mediator, including any per diem fees, and actual and necessary travel and subsistence expenses, shall be provided by the board without cost to the parties. Nothing in this section shall be construed to prevent the parties from mutually agreeing upon their own mediation procedure and in the event of such agreement, the board shall not appoint its own mediator, unless failure to do so would be inconsistent with the policies of this chapter. If the parties agree upon their own mediation procedure, the cost of the services of any appointed mediator, unless appointed by the board, including any per diem fees, and actual and necessary travel and subsistence expenses, shall be borne equally by the parties.

The Educational Employment Relations Act is codified at Government Code section 3540 et. seq. Unless otherwise noted, all statutory references are to the Government Code.

the Association's view and it revived its second request for a PERB-appointed mediator on September 14. On September 16, the regional director determined that an impasse did exist, explaining simply that "the situation has not improved."

DISCUSSION

In appealing the regional director's determination, the Employer claims that a true impasse did not exist because the negotiation process had been impeded by the Association's failure to bargain in good faith.² The District also objects to the impasse determination on the ground that the bargaining status between the parties had not changed between PERB's initial denial of impasse and its ultimate determination that one did exist.

According to subsection 3540.1(f):

"Impasse" means that the parties to a dispute over matters within the scope of representation have reached a point in meeting and negotiating at which their differences in positions are so substantial or prolonged that future meetings would be futile.

PERB rule 36030(c),³ in turn, provides guidelines for impasse determination:

(c) In reaching a determination about the

²A charge to this effect was filed by the District on June 23, 1981. It also alleged that the Association was utilizing the impasse procedures in bad faith.

³PERB rules and regulations are codified at California Administrative Code, title 8, section 31000 et. seq.

existence of an impasse, the Regional Director may consider the number and length of negotiating sessions between the parties, the time period over which the negotiations have occurred, the extent to which the parties have made counter-proposals to each other, the extent to which the parties have reached tentative agreement on issues during the negotiations, the extent to which unresolved issues remain, and other relevant data.

This rule in its entirety, along with the statute, indicates that impasse exists where the parties have considered each other's proposals and counterproposals, attempted to narrow the gap of disagreement and have, nonetheless, reached a point in their negotiations where continued discussion would be futile.

While there is no report of the regional director's investigation of the status of negotiations in this case, the record before us does not evidence any meaningful discussion of proposals, any exchange of counters, or any movement toward agreement on substantive issues, a conclusion also apparently reached by the regional director in noting that the situation had not improved. Under these circumstances, we find such factors as the number and length of sessions and the time period over which negotiations have occurred, enumerated in rule 36030(c), are not as useful in a determination of impasse as those factors, noted above, which evidence a meaningful effort to reach agreement. To provide mediation when, as here,

the parties have made no meaningful effort to negotiate could encourage them to bypass the process of good-faith discussion of employment relations concerns which is the central thrust of the Act's purpose.⁴ We find therefore that genuine impasse has not been reached.

ORDER

The appeal of the Mt. San Antonio Community College District is GRANTED and the determination of the regional director is VACATED.

By: Harry Gluck, Chairperson

Barbara D. Moore, Member

Irene Tovar, Member

⁴Charges against the District alleging bad-faith bargaining were filed by the Association on September 18, 1981.