



STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CHARTER OAK EDUCATION ASSOCIATION,)
)
Charging Party,) Case No. LA-CE-1391
)
v.) PERB Order No. Ad-125
)
CHARTER OAK UNIFIED SCHOOL DISTRICT,) Administrative Appeal
) (Interlocutory)
Respondent, APPELLANT.)
)
) February 25, 1982

Appearances: John J. Wagner, Attorney (Wagner & Wagner) for Charter Oak Unified School District; Sandie Paisley, Attorney for Charter Oak Education Association.

Before Gluck, Chairperson; Tovar and Moore, Members.

DECISION

This case comes before the Public Employment Relations Board (hereafter PERB) on interlocutory appeal by the Charter Oak Unified School District (hereafter District) of a hearing officer's refusal to deny issuance of a complaint.

In its Answer to an unfair practice charge filed by the Charter Oak Education Association (hereafter Association or Charging Party) the District raised as an affirmative defense the allegation that the collective bargaining agreement between the parties provides for binding arbitration and that PERB must defer to that procedure, pursuant to Government Code subsection

3541.5(a)(2).¹

The hearing officer noted that PERB rules provide that the arbitrability defense is properly raised by means of a motion to deny issuance of a complaint.² She elected to treat the

¹subsection 3541.5(a) provides in pertinent part as follows:

(a) Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not do either of the following:
. . . (2) issue a complaint against conduct also prohibited by the provisions of the agreement 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. However, when the charging party demonstrates that resort to contract grievance procedure would be futile, exhaustion shall not be necessary.

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²PERB rule 32654(a) provides:

Objections to the issuance of a complaint pursuant to a prima facie charge may be made on the ground that issuance of said complaint is prohibited pursuant to section 3514.5(a)(2) or 3541.5(a)(2) of the Government Code. Objections shall be in the form of a motion to deny issuance of complaint and must be filed with the Board within the time limits applicable to the filing of an answer to the charge pursuant to Section 32635(a).

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

District's affirmative defense as such a motion, and Charging Party made no objection.

By letter of August 11, 1981, the hearing officer notified the District that evidence to clarify and substantiate its affirmative defense would be required. Specifically, the District was given 20 days to demonstrate that:

1. There is an agreement between the parties which provides for binding arbitration;
2. The issues raised by the unfair practice charge are covered by the agreement; and
3. The issues raised by the unfair practice charge will be heard by the arbitrator on the merits.

The District did not respond to the hearing officer's letter. The hearing officer ruled that, absent such a showing, the District's motion constituted an insufficient defense to the Association's charge. She thus denied the motion to deny issuance of complaint.

Whether its position is treated as a motion or as an affirmative defense, the burden of demonstrating that deferral was appropriate fell upon the District. We find it unnecessary to reach the issue as to whether the District was obligated to demonstrate that the Association's charge would be heard by an arbitrator on its merits, although it was this issue upon which the hearing officer placed primary reliance. Rather, we hold that the District's failure to demonstrate that the

Association's charge was one which was cognizable under a contractual grievance machinery to which PERB must defer was in itself a sufficient ground upon which the hearing officer could properly base her ruling.

The ruling of the hearing officer is hereby AFFIRMED.

ORDER

Upon the foregoing decision and the entire record in this case, the Public Employment Relations Board ORDERS that the hearing officer is to proceed to hearing on the complaint issued in Case No. LA-CE-1391.

PER CURIAM