

FACTS

Applying rule 36030(c)¹ governing impasse declarations under the Educational Employment Relations Act² to the instant case, the regional director determined that the parties had reached a point in their negotiations where continued meetings appeared futile. She noted that since August 1981, when the parties commenced bargaining, approximately 15 sessions, totalling over 40 hours, had been conducted. The University director of collective bargaining, Thomas Mannix, and SUPA representative, Robert Jones, informed the regional director that four categories of negotiating subjects existed.

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

PERB rule 36030(c) provides:

(c) In reaching a determination about the 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.

²Government Code section 3540 et seq. Unless otherwise indicated, all citations are to the Government Code.

The first included categories as to which agreement had been reached.³ The second category was comprised of issues as to which the parties were "very close." The third category included issues on which the parties were "stuck." The fourth category involved issues about which the parties are "far apart."

The regional director indicated that, pursuant to her suggestion, the impasse declaration was deferred pending the outcome of a bargaining session held on March 11, 1982. Subsequent to that session, SUPA reasserted its request for mediation based on its assessment that, while agreement had been reached on four issues (all from the second category), movement was based on SUPA's acceptance of the University's language. The regional director noted that the University and SUPA disagreed about whether the University's salary offer was regressive. The regional director indicated that the parties were in agreement as to major areas of dispute and, with minor exceptions, no movement had been made. Mannix told the regional director that he was at the end of his discretionary power and had to seek authority to make changes in negotiation policy.

Based on the above, the regional director concluded that the parties had considered each other's proposals, had engaged in meaningful discussions, had made movement on substantive issues

³The regional director's determination of impasse, dated March 22, 1982, lists the subjects comprising this and other categories.

and had attempted to narrow their disagreement. In light of the length of time over which negotiations had taken place and the number and length of sessions, she concluded that the parties were at impasse.

In the University's appeal of the impasse declaration, it asserts that no record of evidence exists on which the regional director's decision was based. The University's recitation of the relevant facts differs significantly from those set forth by the regional director. It refers to conduct on the part of SUPA not mentioned in the regional director's determination. Essentially, the University asserts that no true impasse exists because SUPA has failed to bargain in good faith since January 27, 1982.⁴ It alleges in its appeal that SUPA submitted a "final offer to which the University has never been given an opportunity to respond, sought impasse declaration simultaneously with its submission of its final offer, rescinded prior agreements, and improperly preconditioned bargaining on written assurance from the University that it was prepared to make significant movement.

The University's argument is that the regional director failed to investigate these allegations and, based on Mt. San Antonio Community College District (12/30/81) PERB

⁴On March 8, 1982, prior to the regional director's declaration of impasse, the University filed an unfair practice charge alleging that SUPA was not bargaining in good faith. The regional director did not discuss this charge in her impasse declaration.

Order No. Ad-124, could not have determined that a genuine impasse existed.

In SUPA's response, it "questions" the factual assertions made by the University's attorney in the impasse appeal. It does not submit any documents which support the assertion that the University's allegations are not true.

In a letter to the Board from the University dated April 19, 1982, it was pointed out that no record exists as to the evidence relied upon by the regional director. In support of its recitation of the facts, it submitted a declaration from Mannix which it served on SUPA.

DISCUSSION

In Mt. San Antonio CCD and in Marin Community College District (4/21/82) PERB Order No. Ad-126, the Board has determined that impasse necessarily contemplates that the parties attempted in good faith to reach agreement before arriving at that point where the differences in their positions make further negotiations futile.

In the instant case, however, the regional director's determination of impasse failed to address the allegations raised by the University. This oversight is significant because, if the University's allegations are uncontroverted, there is no basis for concluding that the parties are at impasse. SUPA's response to these allegations is merely a general denial of the University's assertions. In sum, SUPA

presents no facts which dispute the University's assertions contained in the appeal.⁵

For these reasons, we therefore grant the University's appeal of the impasse declaration and order the parties to resume negotiations without further delay. In so directing, the Board is mindful that an inordinate amount of time has elapsed since the commencement of negotiations, and we admonish both parties to act with dispatch in moving to agreement or at least removing the impediments that now prevent the Board from invoking impasse procedures.

ORDER

The appeal of the University of California is GRANTED and and the ~~determination~~ of the regional director is VACATED.

By:

Marty Morgenstern, Member Harry Gluck, Chairperson

Virgil Jensen, Member

⁵The University's submission itself raises some doubt as to the authority currently held by its negotiator. The opportunity to respond to SUPA's most recent proposals will require that the University invest its spokesperson with the authority to respond thereto in good faith.