STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SAN FRANCISCO UNIFIED SCHOOL DISTRICT, Charging Party, Petitioner, v. SAN FRANCISCO FEDERATION OF TEACHERS, LOCAL 61, AFL-CIO, Respondent.	Case No. SF-CO-98-78/79 PERB Order No. IR-10 Administrative Appeal (Request for Injunctive Relief and Request for Contempt) October 29, 1979

Appearances; Keith V. Breon, Attorney (Breon, Galgani and Godino) for San Francisco Unified School District; Stewart Weinberg, Attorney (Van Bourg, Allen, Weinberg and Roger) for San Francisco Federation of Teachers, Local 61, AFL-CIO.

Before Gluck, Chairperson; Gonzales and Moore, Members.

I. INJUNCTIVE RELIEF

DECISION

This decision memorializes the Board's decision of September 21, 1979.

On September 10, 1979, the San Francisco Federation of Teachers, Local 61, AFL-CIO (hereafter Federation), the exclusive representative of the certificated employees, voted to engage in and sometime thereafter commenced a strike against the San Francisco Unified School District (hereafter District). Classroom teachers were scheduled to report to work for teacher preparation duties on September 11th. On that date, District Superintendent Robert Alioto announced that regular school would not open as previously scheduled on September 12th. Thereafter, the District announced that its elementary schools would open on September 20th.

On September 19th, the District filed an unfair practice charge against the Union alleging that the continuing work stoppage violated sections 3543.6(c) and 3543.6(d) of the Educational Employment Relations Act (hereafter EERA or Act)[1] in that the Federation had failed to negotiate in good faith and had failed to participate in good faith in the impasse procedures as contemplated by the Act. The District requested that the Board seek injunctive relief.

Following an investigation conducted by the general counsel pursuant to title 8, California Administrative Code section 38110, the Board determined that grounds existed for seeking injunctive relief against the work stoppage in effect. These determinations were made upon the following facts emerging from the investigation:

1. Negotiations between the parties to develop a new contract commenced on July 23, 1979.

2. The District laid off 1,200 certificated employees from a unit of approximately 3,800 regular teachers. In addition, the District proposed no new salary increase.

3. On September 10, the Federation voted to strike and notified the District it was on strike.

4. The opening of the District's regular schools was postponed as a result of the Federation's action and all District schools were in fact not opened until October 3.

5. As of September 10, 1979, neither party had requested a declaration of impasse pursuant to section 35482 of the EERA.

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[1]The Educational Employment Relations Act is codified at Government Code section 3540 et seq. All future references to statute herein are to the Government Code unless otherwise stated.

[2]Section 3548 of the Act provides:

> 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 than in reconciling their

6. On September 13, San Francisco Mayor Diane Feinstein began meeting with the parties to attempt settlement. On September 21, the District declared that the parties were at impasse. Following an investigation, impasse was declared by the San Francisco regional director on September 21 and, pursuant to section 3548, a mediator from the State Conciliation and Mediation Service was appointed on the same date.

7. Unfair practice charges were filed by the Federation alleging that the District had refused to negotiate in good faith in violation of section 3543.5(c) of the Act. These charges are appropriately remedied through normal Board processes in this instance.

The Board considers the statutory enactment of impasse procedures in the EERA as strong evidence of a legislative intent to head off work stoppages prior to the completion of those procedures.[3] This policy has been incorporated

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(cont.)

> 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 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.

[3]Val Verde School District. PERB Order No. IR-9 (9/18/79).

into title 8, California Administrative Code section 38100.[4] The Board's interpretation of statutory intent is consonant with the California Supreme Court decision in San Diego Teachers Association v. Superior Court (1979) 24 Cal.3d 1, wherein the court held:

> Since they (impasse procedures) assume deferment of a strike at least until their completion, strikes before then can properly be found to be a refusal to participate in the impasse procedures in good faith and thus an unfair practice under section 3543.6, subdivision (d). p. 8-9.

In this case, the investigation reveals that neither party had declared impasse or had engaged in even the first step of the impasse procedures prior to the initiation of the instant action by the Federation or the District's filing of the unfair practice charge. The parties had participated in informal settlement sessions with the San Francisco mayor in an effort to resolve their dispute. However, this action was not a substitute for the impasse procedures specified by the Act.

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[4]PERB's rule 38100 provides:

> (a) Upon the filing of a request, the general counsel shall conduct an investigation proceeding into the circumstances of the alleged lockout or work stoppage. To expedite the investigation, the executive director shall make available to the general counsel the services of the regional director and the regional director's staff.
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> (b) The regional director shall make a reasonable effort to notify the parties that an investigative proceeding will be conducted, indicating the time and place thereof. The proceeding will be scheduled at such time as provides the parties with reasonable opportunity to appear. Failure of a respondent to appear shall not preclude the board agent from conducting the investigative proceeding..
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> (c) The board agent may call and question such persons as the agent deems necessary to effectuate the investigation.
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> (d) The board agent shall observe the time limitations contained in section 38115. A report shall be submitted to the general counsel at the conclusion of the investigative proceeding.

Based on the evidence adduced by the general counsel and pursuant to the policy expressed in the Act which contemplates that the parties will utilize the statutory impasse procedures prior to work stoppages, the Board orders the general counsel to seek the injunctive relief requested by the District in order to foster the collective negotiations process and to protect the public interest in maintaining the continuity and quality of educational services. In issuing the following order which conditions seeking an injunction on the employer's acceptance of a PERB-appointed mediator, the Board relies on the inherent authority vested by section 3548 and its power to enforce title 8, California Administrative Code sections 36020 and 36070.

ORDER

Based upon the facts elicited in the investigation conducted by the general counsel upon a request for injunctive relief filed by the San Francisco Unified School District in unfair practice case number SF-CO-98, the Public Employment Relations Board orders the general counsel to seek injunctive relief against a work stoppage called, engaged in, and encouraged by the San Francisco Federation of Teachers, Local 61, AFL-CIO.

The Board further orders that such relief be conditioned upon the District accepting the services of a mediator appointed by PERB and meeting with the mediator at all duly noticed meetings.

Such injunctive relief shall include the seeking of a temporary restraining order and such preliminary and permanent relief necessary to preserve the Board's processes in determining the rights of the parties on the merits of the underlying unfair practice charges.

II. CONTEMPT

DECISION

Pursuant to the decision and order on injunctive relief made by the Board on September 21, 1979, the general counsel sought injunctive relief in the San Francisco Superior Court on the same date.

On September 24, 1979, the court issued a temporary restraining order enjoining acts encouraging or continuing the strike. On September 24 and 25, the order was personally served on the Federation and its officers. Despite the court order, employees did not return to work and activities by the Federation and its agents continued to encourage and support the continuation of the strike.

On October 2, 1979, the District formally requested the Board to file a declaration in court seeking contempt sanctions against the Federation and any of its officers where evidence provided by the District was sufficient to demonstrate that the court order was being violated. On October 3, the court issued an Order To Show Cause In Re Contempt based upon six specific incidents of contempt alleged by the general counsel to have been conducted between September 24 and October 2.

The court issued a preliminary injunction against continuance of the strike on October 5, 1979.

During the period of October 5 to October 23, the general counsel continued to accumulate further evidence of activities by the Federation and its agents in violation of the preliminary injunction based upon evidence presented by the District. Such evidence was to be filed with the court prior to the contempt hearing scheduled for October 30, 1979.

The parties reached agreement for a two-year employment contract on October 23, 1979, and the Federation voted to end the strike. Employees returned to work on October 24th.

On October 25, 1979, both the Federation and the District withdrew all unfair practice charges relating to collective negotiations and strike activities which preceded execution of an agreement. In addition, the District formally requested the Board to refrain from pursuing any contempt proceedings pending before the court and further requested that the Board return any evidence presented to the general counsel in support of the contempt incidents which has not yet been filed in court.

This case presents the first instance where the board has been requested to and has pursued contempt sanctions for violation of a court order requested by the agency pursuant to its responsibilities under the Educational Employment Relations Act.

PERB's responsibility for maintaining labor relations stability in the public schools was addressed by the Supreme Court in San Diego Teachers Association v. Superior Court, supra, when it said:

> . . . The public interest is to minimize interruptions of educational services. Yet did not an identical concern underlay enactment of the EERA? . . . PERB's responsibility for administering the EERA requires that it use its power to seek judicial relief in ways that will further the public interest in maintaining the continuity and quality of educational services, (p. 11) . . . Its (PERB) mission to foster constructive employment relations (sec. 3540) surely includes the longrange minimization of work stoppages, (p. 13)

However, the Supreme Court further stated:

> It does not follow from the disruption attendant in a teachers strike that immediate injunctive relief and subsequent punishment for contempt are typically the most effective means of minimizing the number of teaching days lost from work stoppages. As observed in City and County of San Francisco v. Cooper, supra, 13 Cal.3d 898, 917, the question of appropriate sanctions for illegal strike activity is complex. Harsh, automatic sanctions often do not prevent strikes and are counterproductive. EERB's responsibility for administering the EERA requires that it use its power to seek judicial relief in ways that will further the public interest in maintaining the continuity and quality of educational services.

In order to maintain and protect the integrity of its processes, the Board must insure that its orders and the resultant interim relief directed by the court are complied with.

The Board acknowledges that post settlement punishment may not promote harmonious employer-employee relations, especially where the parties have made a decision to put their dispute behind them. In the Board's view, a delicate balance between these competing interests must be reached in order for the Board to function effectively and for harmonious labor relations to resume in the San Francisco public schools.

In this case, the Board has decided that it should not withdraw the contempt declaration filed and served against the Federation notwithstanding the amnesty agreement executed by the parties. At the time the District requested that contempt be sought, the Board determined that it was incumbent on the District to provide evidence sufficient to prove violation of the court's orders against the Federation. The District has provided evidence which was incorporated in the contempt declaration filed with the court on October 3, 1979. Based on that evidence, the general counsel is therefore directed to pursue the contempt declaration consistent with this order. As

to the evidence presented by the District subsequent to that date, the Board has determined, in order to further the parties' desire to re-establish a cooperative relationship, to forego seeking further contempt citations.

The Board is informed, that, the San Francisco Federation of Teachers, Local 61, AFL-CIO, will not contest the six incidents of contempt, alleged in the October 3 declaration in the spirit of restoring harmonious labor relations between the parties as soon *as* possible. The Board accepts the Federation's willingness to plead nolo contendere.

ORDER

Based, upon a request to seek contempt charges against the San Francisco Federation of Teachers,.. Local 61, AFL-CIO, and evidence presented to the court on October 3, 1979, the Public Employment Relations Board orders the general counsel to seek sanctions by the court: on the contempt declaration as; filed on that date. The Board further accepts, subject to approval by the court, the no contest plea by the Federation to the alleged contempt in any effort to expedite the continuance of a quality and harmonious educational program in the San Francisco public schools.

By:
Barbara D. Moore, Member

Harry Gluc Harry Gluck, Chairperson

Dated: October 29, 1979

Raymond J. Gonzales, Member, concurring:

I agree with the decision that PERB should have sought injunctive relief against the strike, that PERB has sought enforcement of the injunction issued in its behalf, and in the disposition of our own contempt proceedings against the Federation. However, I disagree with the majority decision to condition our seeking of the injunction against the strike on the District's acceptance of a PERB appointed mediator. I also believe that PERB should take the initiative to enforce an injunction granted in its own behalf, rather than acting only at the request of the charging party and only when the charging party will furnish the evidence necessary to the enforcement proceeding.

Initially, I do not believe PERB has authority in the circumstances of this case to make the injunction conditional on the District accepting a PERB appointed mediator. The majority states "The parties had participated in informal settlement sessions with the San Francisco mayor in an effort to resolve their dispute. However, this action was not a substitute for the impasse procedures specified by the Act." But section 3548 of the EERA does specifically provide for their own mediation procedure and states, in prohibitory language, that PERB must not interfere to impose its own mediation procedure on the parties. Section 3548 states in full:

> 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 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.
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> (Emphasis is added.)

While the prohibition against PERB's intervention may be relaxed where the parties' use of their own mediator would be "inconsistent with the policies" of the EERA there is no finding or other explanation by the majority of why it must not observe this statutory prohibition. The majority states: "In issuing the following order which conditions seeking an injunction on the employer's acceptance of a PERB-appointed mediator, the Board relies on the inherent authority vested by section 3548 and its power to enforce title 8, California Administrative Code sections 36020 and 36070. "

I feel that for the majority to disregard such a statutory prohibition on the basis of the Board's "inherent authority" alone, is a cavalier disregard of the obvious legislative intent to allow the parties to choose their own mediator. The fact that the majority does not bother to provide any explanation whatsoever as to why the parties' use of their own mediator is inconsistent with the policies of EERA only underscores the fact that there was, in fact, no good reason.

In my view, there is no question but that an injunction was warranted in this case. It is clear that the Federation struck the District and had not completed the statutory impasse procedures which were designed to head off strikes. Yet apparently the majority would not have sought the injunction unless the District acceded to the majority's condition, even though the District had a statutory right to not accept a PERB appointed mediator. I continue to be disturbed by the continuing willingness of the majority to sacrifice the statutory rights of parties for the intriguing injunction conditions it concocts. This case presents yet another example of the majority's using its "exclusive initial jurisdiction" to seek injunctive relief in strike situations to involve itself unreasonably in the relationship between the parties.

I continue to believe that the board should not make its injunctions against a party which is likely in violation of the good faith impasse or negotiations requirements of the EERA

conditional on the requesting party doing something. As I stated in Val Verde School District (7/18/79) PERB Order No. IR-9:

> When injunctive relief against a work stoppage is conditioned on the employer's conduct, the implication is that strikes by public school employees may be legitimized by such employer conduct. I disagree.

This is the first case in which PERB has found it necessary to seek enforcement of its injunction. The majority's opinion seems to imply that PERB's role in enforcement is to be somewhat passive, dependent to a large extent on the district's willingness to press charges.

I disagree with this view of PERB's role. I believe that where PERB has decided to seek an injunction against a strike or lockout before completion of impasse procedures, PERB should seek enforcement of its injunction if and as soon as it appears that the injunction is being violated. I believe this entails PERB's taking action irrespective of a request to enforce by the party requesting us to seek the injunction and irrespective of the charging party's willingness to investigate or gather evidence necessary for enforcement in our behalf.

When the PERB decides to seek such an injunction, its role becomes independent of that of the employer or employee organization, and the interest it represents is that of the public. Therefore, it is PERB and not the parties which should control the injunction proceedings, including enforcement, if the public interest so requires.

Enforcement of the injunction should not be dependent on whether the charging party requests enforcement or whether the charging party will gather sufficient evidence to support enforcement at a trial, for to do so would leave it to them, and not PERB, to decide whether and how the public interest is to be vindicated. Obviously, even giving responsibility to an employer or employee organization for developing evidence to support enforcement is to allow them to control enforcement; no one will vigorously develop evidence in support of a legal action to which they are opposed.

The purpose of our seeking an injunction is to promote the public interest by protecting the integrity of the EERA impasse procedures and PERB's remedial powers. By seeking the injunction, in this case, the public interest is served. By enforcing that injunction, the public interest is vindicated. The valuable purpose of the injunction is diminished when fettered by meddlesome conditions on its granting and enforcement.

Raymond J. GONZALES, MEMBER