

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



FRESNO UNIFIED SCHOOL DISTRICT,)	
)	
Charging Party,)	
)	
v.)	Case No. S-CO-33
)	
FRESNO TEACHERS ASSOCIATION,)	PERB Decision No. 156
CTA/NEA,)	
)	December 31, 1980
Respondent.)	
)	

Appearances: James C. Romo, Attorney (Paterson & Taggart) for Fresno Unified School District; Ernest H. Tuttle III, Attorney (Tuttle & Tuttle) for Fresno Teachers Association, CTA/NEA.

Before Gluck, Chairperson; Moore, Member

DECISION

This case comes before the Public Employment Relations Board (hereafter PERB or Board) on a request by the charging party, the Fresno Unified School District (hereafter District), that the Board affirm the hearing officer's partial dismissal of an unfair practice charge filed by the District against the Fresno Teachers Association (hereafter Association).

The District alleged that the Association struck in the face of a contractual provision against strikes and that this conduct violated section 3543.6(b) and (c) of the Educational

Employment Relations Act (hereafter EERA or Act).¹ The hearing officer dismissed without leave to amend that portion of the District's charge which alleged that a strike in violation of a collectively negotiated no-strike clause is an unfair practice. The hearing officer also dismissed without leave to amend those paragraphs in the District's prayer that (1) sought a posting order "to the effect that Respondents have violated a valid collective bargaining agreement in violation of the Act," and (2) sought money damages for breach of contract. These dismissals were made on the grounds that PERB has no jurisdiction to enforce agreements between the parties.²

¹The EERA is codified at Government Code 3540 et seq. Unless otherwise noted, all statutory references are to the Government Code.

Section 3543.6(b) and (c) provide:

It shall be unlawful for an employee organization to:

.
(b) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with a public school employer of any of the employees of which it is the exclusive representative.

²Section 3541.5(b) provides:

(b) The board shall not have authority to enforce agreements between the parties, and

The District appeals this partial dismissal, urging the Board itself "to affirm the Hearing Officer's decision in all particulars." (Emphasis added.) The District filed its request under PERB rule 32630(b),³ which provides that a charging party may file an appeal of a dismissal with the Board itself.

As we noted in Palos Verdes Peninsula Unified School District/Pleasant Valley School District (7/16/79) PERB Decision No. 96, "It is well-recognized in civil matters, while a party may not ordinarily appeal a judgment in its favor, an appeal is proper if the judgment apparently in a party's favor is actually against that party."

In this case, the District requests that the Board affirm the hearing officer's decision in all particulars. Unlike the

shall not issue a complaint on any charge based on alleged violation of such an agreement that would not also constitute an unfair practice under this chapter.

³PERB rules are codified at California Administrative Code, title 8, section 31000 et seq. PERB rule 32630(b) provides in pertinent part:

(b) The charging party may . . . (2) file an original and four copies of an appeal of the refusal with the Board itself within 20 days following service. The appeal shall be filed with the Executive Assistant to the Board and shall be in writing, signed by the party or its agent, and contain the facts and arguments upon which the appeal is based. Service and proof of service of the appeal pursuant to section 32140 are required.

appellant in Palos Verdes, who disagreed with the hearing officer's rationale but did not dispute the order, the District in this case has not alleged that it is aggrieved by any portion of the dismissal or otherwise demonstrated that the decision will be one of adverse impact. The District in fact agrees with the dismissal in all respects. Thus, there is no dispute or other justiciable controversy before the Board. Under these circumstances, the Board will not review the hearing officer's dismissal of part of the District's unfair practice charges.

The Board therefore dismisses the District's appeal and in so doing, makes no judgment on the merits of the hearing officer's decision.

ORDER

The Fresno Unified School District's appeal of the partial dismissal of its charges in Unfair Practice Case No. S-CO-33 is DISMISSED.

PER CURIAM