

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA SCHOOL EMPLOYEES)	
ASSOCIATION AND ITS WALNUT)	
CHAPTER NO. 446,)	
)	
Charging Party,)	Case No. LA-CE-460
)	
v.)	
)	PERB Decision No. 160
WALNUT VALLEY UNIFIED SCHOOL)	
DISTRICT,)	March 30, 1981
)	
Respondent.)	

Appearances: Michael Heumann, Attorney for California School Employees Association and its Walnut Chapter No. 446; Patrick D. Sisneros, Attorney (Wagner & Wagner) for Walnut Valley Unified School District.

Before Gluck, Chairperson; Jaeger, Moore and Tovar, Members.

DECISION

The Walnut Valley Unified School District (hereafter District) excepts to a hearing officer's proposed decision which finds the District violated section 3543.5(c) of the Educational Employment Relations Act (hereafter EERA)¹ by

¹All statutory references are to the California Government Code unless otherwise specified. Section 3543.5(c) provides:

It shall be unlawful for a public school employer to:

negotiating certain overtime provisions directly with four District employees. The California School Employees Association and its Walnut Chapter No. 446 (hereafter CSEA) excepts to the hearing officer's failure also to find a violation of section 3543.5(a) and (b).²

The District argues that no violation should be found as CSEA, by signing a collective agreement with the District including a provision governing overtime, waived its right to negotiate concerning the increase in the employees' hours which is the subject of this charge.

The hearing officer's proposed decision is reversed and the charge is DISMISSED.

.....

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

²Section 3543.5 provides:

It shall be unlawful for a public school employer to:

(a) 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.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

.....

FACTS

This District has recognized CSEA as the exclusive representative of its classified employees, including instructional aides, since November 1977. A collective agreement between the parties was in effect during all times relevant to this case. Belva Keenan is an Instructional Aide I and Ann Marton, Ruth Frazer, and Linda Cuesta are Instructional Aide IIs. On or just prior to March 13, 1979, Truman Collins, Principal of the District's Collegewood School, discussed with Keenan her working additional hours for a period of time. He did mention to her that she would receive additional sick days and benefits according to the amount of time so worked. On March 13, 1979, Keenan signed a document which reads:

I voluntarily accept the additional limited term assignment as a [sic] Instructional Aide I for 3 hours for a period of 6 to 9 weeks.

I understand this is a temporary assignment and may cease at any time and it will not become part of my permanent regular assignment.

Soon thereafter, Collins approached Marton and Frazer and made arrangements with them to work additional hours. Collins also approached Cuesta and asked her to work additional hours, which she did. During this period, Collins did not notify CSEA of any of his discussions with the aides or his agreements reached with them.

DISCUSSION

The gravamen of CSEA's charge is that the District, by directly approaching four individual employees, bypassed CSEA in order to effect a change in the terms and conditions of employment as to which the District is obliged to negotiate. Specifically, CSEA alleges that, since extra-hour assignment is a matter within the scope of representation as defined by section 3543.2 of EERA,³ the assignment of additional hours

³Section 3543.2 provides:

The scope of representation shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment. "Terms and conditions of employment" mean health and welfare benefits as defined by Section 53200, leave, transfer and reassignment policies, safety conditions of employment, class size, procedures to be used for the evaluation of employees, organizational security pursuant to Section 3546, procedures for processing grievances pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8, and the layoff of probationary certificated school district employees, pursuant to Section 44959.5 of the Education Code. In addition, the exclusive representative of certified personnel has the right to consult on the definition of educational objectives, the determination of the content of courses and curriculum, and the selection of textbooks to the extent such matters are within the discretion of the public school employer under the law. All matters not specifically enumerated are reserved to the public school employer and may not be a subject of meeting and negotiating, provided that nothing herein may be construed to limit the right

to each of the four instructional aides in this case was impermissible.

The law regarding employers negotiating directly with their employees and bypassing the designated bargaining representative is clear. Section 3543.3 of the EERA, requires the employer to negotiate and bargain in good faith once an employee organization has been duly designated as the exclusive representative for a given group of employees.⁴ This obligation imposes on the employer the requirement that it provide the exclusive representative with notice and the opportunity to negotiate on proposed changes of matters within the scope of representation. Unilateral action taken without fulfilling this obligation constitutes a refusal to negotiate in good faith. San Mateo County CCD PERB Decision No. 94 (6/8/79). An employer may not, in the presence of an exclusive

of the public school employer to consult with any employees or employee organization on any matter outside the scope of representation.

⁴Section 3543.3 reads:

A public school employer or such representatives as it may designate who may, but need not be, subject to either certification requirements or requirements for classified employees set forth in the Education Code, shall meet and negotiate with and only with representatives of employee organizations selected as exclusive representatives of appropriate units upon request with regard to matters within the scope of representation.

representative, unilaterally establish or modify existing policies covering, for example, overtime pay rates, the selection of employees to work overtime, or the definition of overtime hours.

However, once such a policy has been established by lawful means, the employer has the right to assign personnel to meet operational needs in accordance with that policy; as, in the instant case, to ask four instructional aides to voluntarily work overtime for a specified number of hours because of regular employee illness or other work needs.

To prove that the District has unlawfully bypassed CSEA by "negotiating" directly with the four employees in question, it must be demonstrated that the District sought either to create a new overtime policy of general application or to obtain a waiver or modification of existing policy applicable to those employees.

We find that the record is totally devoid of any proof that the District employed an extra-hours assignment method which conflicts with established policy, past practice, or contractual requirements. Nor does the evidence demonstrate that the employer sought to negotiate individual employment contracts with the affected employees.

CSEA may have intended to demonstrate a general plan by the District to seek modification of its overtime policy by having a CSEA site representative testify as to a conversation held

with the District principal concerning a grievance filed by another employee over a similar assignment. If so, CSEA's efforts fall short. The principal's statement to the effect that he would have asked for a written acknowledgment that the grievant had volunteered for the work may reasonably be construed as nothing more than his desire to establish that the employee had not been ordered to work overtime.⁵

Similarly, we can reach no conclusion that in dealing with the four employees here, the District sought to change the overtime policy. The document signed by Ms. Keenan is, at best, ambiguous. On its face, it constitutes nothing more than an acknowledgment on her part that she voluntarily accepts an overtime assignment which will not entitle her to any additional benefits. There is nothing in the document itself or in the testimony surrounding it which indicates that the District departed from its overtime policy or sought to obtain Ms. Keenan's approval of a new policy. The Board cannot infer from such a paucity of evidence conduct constituting a violation of law. The charge should be dismissed.

⁵Article 10.3 of the collective agreement reads:

Assignment Adjustment: Any employee in the bargaining unit who is required to work an average of thirty (30) minutes or more per day in excess of said employee's regular part-time assignment for a period of twenty (20) consecutive working days shall have his/her regular assignment adjusted upward to reflect the longer hours.

ORDER

Upon the foregoing decision and the entire record in this case, the Public Employment Relations Board ORDERS that: the unfair practice charge filed by the California School Employees Association and its Walnut Chapter No. 446 against the Walnut Valley Unified School District is DISMISSED.

By: John W. Jaeger, Member

Harry Gluck, Chairperson

Barbara D. Moore, Member

Irene Tovar, Member