

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SAN RAMON VALLEY EDUCATION)	
ASSOCIATION, CTA/NEA,)	
)	
Charging Party,)	Case No. SF-CE-349
)	
v.)	PERB Decision No. 230
)	
SAN RAMON VALLEY UNIFIED SCHOOL)	August 9, 1982
DISTRICT,)	
)	
Respondent.)	
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Appearances: Jon A. Hudak, Attorney (Breon, Galgani & Godino)
for San Ramon Valley Unified School District.

Before Gluck, Chairperson; Tovar and Jaeger, Members.

DECISION

The San Ramon Valley Unified School District (District) excepts to the hearing officer's decision that the District violated the Educational Employment Relations Act (EERA)¹ by 1) certain coercive and threatening remarks made by a principal to a teacher even though this conduct was not charged; 2) denying agents of the San Ramon Valley Education Association, CTA/NEA, (Association) access to certain schools; 3) forbidding representatives of the Association to address the school board on issues that were under negotiation, grievances or

¹EERA is codified at Government Code section 3540 et seq. Unless otherwise specified, all references shall be to the Government Code.

arbitrations; and 4) unilaterally changing the pupil-teacher ratio.

Only these aspects of the hearing officer's decision which were excepted to are considered in this decision.

FACTS

1. The Reid-Henderson Conversations

Ronalee Reid, a science teacher at San Ramon High School, became a candidate for president of the Association in October 1978. During her candidacy, she had several conversations with her principal, James Henderson.

In response to her informing him that, although running for president was important to her, teaching had a higher priority, he said that maybe San Ramon High School (SRHS) was not the place for her any longer.² This remark is unclear, but it may relate to her candidacy rather than her order of priority.

By his own admission, Henderson expressed to Reid his hope that the grievance procedure would not be the only vehicle used for solving problems and that he did not want SRHS to become a place where all the time was spent dealing with grievances.

This conversation also touched on a grievance which had been filed by Reid several months before over teaching

²We, with the hearing officer, credit Reid's version of these facts because of her reliance on her contemporaneous notes and her overall superior ability to recall details.

reassignments in the science department. Henderson commented that he was glad it was settled because he felt that people could have gotten hurt, that it would have been a divisive force in the science department, and that his main motivation in settling it was to avoid having every member of the department testify at an arbitration hearing.

Subsequent to this conversation, Reid became involved in two other potential grievances concerning air conditioning and darkening drapes for the drama department. Before taking formal steps, Reid informed Henderson of the complaints, whereupon he became angry and said that Bernier, the California Teachers Association staff person, had better things to do than become involved in what was going on at the campus. He also told her that the drama teacher, Lynn Goodwyn, could meet with the arts coordinator about the drapes but he didn't want Reid and Bernier involved in that meeting. Finally, Henderson implied that if Goodwyn persisted in this complaint, he might not be able to remain objective about decisions which he may be called upon to make about Goodwyn's future.

The Association did not allege any part of these conversations to be violations of the Act, although it did charge that the current teaching reassignments were done in retaliation for filing grievances over the previous year's assignments. The hearing officer dismissed that charge, and the Association did not except to that finding.

2. Access Problems

Beginning in January 1979, the Association's staff person, Jacques Bernier, experienced problems at four of the District's 20 schools, where his access to the faculty lounge during lunch time was restricted in various ways.

The District's access policy is less than clear. The written rule provides that organizations shall have the right to use school buildings for meetings without charge but with permission of the principal which was not to be unreasonably withheld. The rule also reads:

8. Employee organizations may contact employees for the purpose of discussing organization business (for recruitment purposes) before and after duty hours or during authorized break periods . . . All organization representatives shall first notify the principal that they are in the school before contacting any employee for the purpose of discussing organization business.

According to the superintendent's interpretation of Rule 8, permission from the principal was not required when the representative wished to discuss Association business with an employee. Only notification was required.

After a 1977 incident in which Bernier was nearly arrested at Walt Disney School when he was conferring with teachers in the lounge during lunch time, the superintendent and Bernier agreed that the latter would have access to faculty lounges during non-working time for informal discussions, but the

Association would use other rooms for official meetings. Between October 1977 and January 1979, the Association did not encounter policies or practices at individual schools that conflicted with this understanding.

On a routine visit to Disney in January 1979, Bernier was told by the secretary that he would have to be cleared by the principal, Bonnie Solberg, before going into the lounge. Solberg refused to allow him to go into the lounge, offering no reason beyond her authority to make access decisions, although she did offer an alternate site.³ A few days later she conditioned his access to the lounge on his announcing when he would be there and listing those employees whom he intended to see. He would be permitted to speak only to those employees on the list, and then they were to meet someplace besides the lounge. Bernier agreed to list employees but protested these rules. She, like three other principals who restricted lounge access, cited alleged wishes of various employees to be free from "outsiders" during lunch as justification for her action.

At Monte Video School, the policy excludes everyone who is selling or "pushing something" from the lounge during lunch on the theory that teachers should have a sanctuary during their

³On another occasion, Bernier was prevented by Solberg from meeting with a couple of grievance representatives.

lunch hour. However, there have been incidents at this school where "outsiders" have been allowed in the lounge.⁴

At Rancho Romero School, the policy directs that Association staff meet with teachers in a workroom which is adjacent to the lounge. Association representatives are prohibited from entering the lounge to solicit or discuss individual grievances but may distribute literature there.

At Armstrong School, Bernier met in the lounge in April 1979 to discuss a grievance concerning class size. The principal was present and allowed the meeting to continue but, shortly thereafter, told an Association official that he didn't want Bernier in the lounge discussing grievances and that Bernier was not to come on campus without his prior approval. Although the principal has never withheld permission, he acknowledged that if he were not present to grant permission, then Bernier would not be allowed on campus.

Teachers at all of these schools have a 30-minute lunch break. The lounges are equipped with stoves and refrigerators where the lunches are stored. For this reason, it is virtually necessary for the teachers to eat in the lounges.

⁴E.g., parents of students or relatives of teachers, classroom volunteers.

3. Refusal to Allow Reid to Address the School Board

Pursuant to a District policy that prohibits an Association representative from speaking to the school board on matters under negotiation or discussing grievances, arbitrations, or personnel matters, Reid, then president of the Association, was denied an opportunity to address the school board on an advisory arbitration award subject to the board's action at that particular meeting. She was also prohibited from speaking at an executive session on a grievance matter.

4. The Unilateral Change in Pupil-Teacher Ratio

In March 1979, budget considerations prompted a discussion among administrative staff regarding changing pupil-teacher ratios. The collective bargaining agreement called for 1:25; and the suggested change was 1:26. The administration started planning for the change before the board of education approved it and ultimately scheduled assignments based on the adopted 1:26 ratio. The increase in the staffing ratios would increase class size by 1.3 students which would in turn require 6.8 fewer teachers.

The contract established "guidelines" for student-teacher ratios and contained the following language:

Efforts shall be made to maintain the above staffing guidelines recognizing that limitations of budget, of space, or of facilities may require exceptions. When schools go beyond the established student-teacher ratio as soon as it is

The District objects to this finding for the simple reason that none of the conduct was charged by the Association. It argues that Santa Clara, supra, differs in several significant aspects from the instant case and does not permit the result reached by the hearing officer.

In Santa Clara, this Board held that it would entertain uncharged violations in certain narrow circumstances: 1) the uncharged violation must be intimately related to the subject of the complaint and arise from the same course of conduct; 2) the matter must be fully litigated and the parties given a full opportunity to engage in direct and cross-examination.

The violation charged in that case was a discriminatory refusal to hire and the uncharged illegal remarks⁶ occurred during the same conversation in which the charging party was denied a permanent position. Thus, both the remarks that were uncharged and the actual violation arose from the same course of conduct.⁷

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.

⁶These remarks questioned the wisdom of the charging party's contacting the union and suggested that, in the future, she should come to the principal first with any problems.

⁷Santa Clara Unified School District had previously been remanded (PERB Decision No. 60 (8/3/78)), to resolve existing credibility issues raised by conflicting testimony as to these

possible considering the above factors, adjustments shall be made to adhere to the established ratio.

The agreement also contains a zipper clause which provides in pertinent part:

The District shall have no further obligation to meet and negotiate during the terms of this contract, . . . on any subject whether or not said subject is covered by this contract even though such subject was not known or considered at the time of the negotiations meetings to the execution of this contract.

Although the new ratio was in effect at the time of the hearing, there is no indication that the change was permanent or that it differed in any way from those types of changes contemplated by the contract.

DISCUSSION

1. Reid-Henderson Conversations

Relying on Santa Clara Unified School District (9/26/79) PERB Decision No. 104, the hearing officer found Henderson's comments to be violations of subsections 3543.5(a) and (b)⁵ because they were coercive and threatening, and disparaged the negotiated grievance procedure.

⁵Subsections 3543.5(a) and (b) state:

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

The conversations in this case were not intimately related to the subject of the complaint, i.e., the discriminatory reassignment. Instead, they focused on different subjects, e.g., grievances in general, using Bernier, and threats against Reid and Goodwyn.

Although Henderson's comments were permitted to be introduced at the hearing as evidence of illegal motive for the reassignments, the hearing officer never indicated that he would consider them as a basis of a separate charge which, in fact, was not litigated.⁸ His use of the evidence here denied the District its right to be fully informed of charges brought against it and to have a full and fair opportunity to defend such charges, which amounts to a denial of judicial due process. Accordingly, we reverse the hearing officer's finding of a violation.

2. Access

The District argues that the hearing officer's finding that the principals' restriction of Association access to teachers in the lounges during lunch time violated subsections 3543.5(a)

remarks which the hearing officer did not consider. The parties were thus on notice that this was an issue which the Board would consider, and therefore fully litigated the issue with full direct and cross-examination.

⁸The District in fact objected to evidence of parts of the conversations on the ground that they did not relate to anything in the charges, but was overruled by the hearing officer who allowed it for the purpose indicated. The charging party offered the remarks as evidence of motive for the reassignments.

and (b), undermines the District's right to maintain an orderly and harmonious work environment. The crux of its argument is that it was justified in restricting the Association's access because of alleged faculty wishes to not have solicitors of any kind in their lunch area.

This Board has, twice before, had the opportunity to address the rights of employee organizations' access to school employees under subsection 3543.1(b)⁹. Richmond Unified School District/Simi Valley Unified School District (8/1/79) PERB Decision No. 99, and Long Beach Unified School District (5/28/80) PERB Decision No. 130. In the initial case, Richmond, we decided that private sector principles are the benchmark of the reasonableness of the public school employer's regulation of access. Essex International, Inc. (1979) 211 NLRB 749 [86 LRRM 1411] established that rules which prohibit solicitation¹⁰ during "working hours" (which would include

⁹Subsection 3543.1(b) states:

(b) Employee organizations shall have the right of access at reasonable times to areas in which employees work, the right to use institutional bulletin boards, mailboxes, and other means of communication, subject to reasonable regulation, and the right to use institutional facilities at reasonable times for the purpose of meetings concerned with the exercise of the rights guaranteed by this chapter.

¹⁰The exact nature of "Association business" that Bernier wished to conduct in the lounges is unclear from the record. At the very least it included discussion of pending grievances

lunch and breaks) unduly restrict employees' right to engage in protected activities since the employer has no cognizable interest in prohibiting nondisruptive contact in nonworking areas between employees and their organizations during duty-free periods of the day.

Pursuant to its legitimate interest in regulating the use of its facilities, the District may require advance notification when the organization wishes to conduct a meeting in facilities not normally used by nonworking employees, Long Beach, supra. However, in this case, the employer exceeded the bounds of reasonable regulation when it banned Bernier during the lunch period from lounges, which were nonworking areas, or otherwise restricted his access by forcing him to get prior permission from the principal.¹¹ Allowing him, or any other agent of the Association, into the lounges posed no threat of disruption of the educational process or other school functions.

The District's assertion that its restriction of lunch room access was legitimized by employee desires to be free from solicitation or "outsiders" is no defense. As we noted in Long Beach, supra:

While the District may legitimately promulgate rules to prohibit disruptive

and we have no reason to believe that it went beyond permissible organizational interests.

¹¹The District, however, may require nonemployee visitors to sign in at the school office before going to a meeting site, Long Beach, supra. Further, the Board will not disturb that portion of the parties' arrangement whereby the Association uses rooms other than the lounges for official meetings.

conduct, the EERA does not establish the public school employer as the guardian of the employees' undisputed right to refrain from participating in the activities of an employee organization In balancing the right of access of organizations and the right of individual employees to participate or refrain from participating in organizational activities, the Board finds the latter right is adequately protected in that disinterested employees are not a captive audience and may simply leave the nonworking areas or otherwise ignore the organizational activities. (pp. 21-22.)

Thus, banning or interfering with the Association's access to the lounges during lunch is an unreasonable restriction violative of subsection 3545.5(b). Because this practice also prohibited employees from participating in the activities of the organization, and was not justified by business necessity, we find that the policy also violated subsection 3543.5(a). See Carlsbad Unified School District (1/30/79) PERB Decision No. 89 and Long Beach, supra. For the same reasons, we find the District's restriction on the types of discussions, e.g., no group meetings or grievance discussions, is unwarranted because it presumes that all group meetings will be disruptive, a conclusion that is unsupported by the evidence. See Long Beach, supra, pp. 17-18.

3. Addressing the School Board

We affirm the hearing officer's conclusion that the District violated subsections 3543.5(a) and (b) by not allowing Reid to speak on the advisory arbitration, but for different reasons.

Although we are mindful of Constitutional parameters,¹² we base our conclusion on the provisions of the EERA. The issue here is whether the Act permits the District to limit the subject matter concerning which an exclusive representative may address it in public meetings.

In City of Madison v. Wisconsin Employment Relations Commission (1976) 429 U.S. 167 [93 LRRM 2970], the Supreme Court resolved a conflict between labor law principles and free speech in favor of the First Amendment. During deadlocked negotiations over agency fee, a nonmember of the exclusive representative was permitted to address and present a petition to the Madison school board opposing the agency fee. After this meeting, negotiations were promptly concluded except for the agency fee proposal. Deciding in favor of the exclusive representative's unfair practice charge against the employer for bypassing the negotiations process, the Wisconsin Employment Relations Commission ruled in favor of the union and ordered the school board to cease and desist from allowing nonexclusive representatives to speak.

The Supreme Court found this required ban objectionable, concluding that the danger of the exclusive representative being bypassed in negotiations was not serious enough to

¹²See Shelton v. Tucker (1960) 364 U.S. 479; Pickering v. Board of Education (1968) 391 U.S. 563; Givhan v. Western Line (1979) 439 U.S. 410.

warrant the curtailment of any citizen's speech, irrespective of his employment status or content of his speech. The Court also noted that the nonmember was not really negotiating but was speaking as a member of the public, and was not authorized to enter into an agreement nor attempting to do so. The Court indeed recognized the difference between mere speech and negotiation when it commented:

Regardless of the extent to which true contract negotiations between a public body and its employees may be regulated - an issue we need not consider at this time - the participation in public discussions of public business cannot be confined to one category of interested individuals. City of Madison, supra, p. 2973. (Emphasis added.)

The Fourth Circuit considered the extent to which speech by employee representatives could be regulated by a public body in Henrico Firefighters Assn. v. Supervisors (1981) [107 LRRM 2432]. There the county policy prohibited employees from addressing the Board on behalf of other employees, but permitted speaking on one's own behalf.¹³ Representatives of the Firefighters organization were barred from speaking on behalf of their members at a public meeting of the board of supervisors. The Court ruled that the county's prohibition violated the First Amendment. However, recognizing that

¹³State law prohibited local governments from recognizing exclusive employee organizations and from negotiating collective bargaining agreements.

the board was constrained from negotiating with the representatives, the Court noted the mere advocacy or presentation of the union's position does not constitute negotiating or grieving. The union was not attempting to engage in any dialogue with the board or to elicit a response from it and, consequently, the absolute prohibition of speech by the employee representatives violated the First Amendment.

While Henrico's bar against open forum negotiations was predicated on state law prohibiting the process entirely, distinctions between negotiations and advocacy support the conclusion that the former activity may be prohibited at a public meeting, an inference which may be drawn from the court's language in City of Madison, supra. The collective negotiation process, including that established by EERA, gives parties the right to appoint their own negotiators and forbids the parties from dictating who the representatives of the other side may be.¹⁴ Bypassing the authorized negotiators, for example, by going straight to the school board of trustees with proposals or concessions, would subvert the statutory scheme and arguably violate the good-faith obligations of collective bargaining just as the employer's effort to bypass the union's negotiators by seeking direct access to the membership has been

¹⁴Booth Broadcasting Co. (1976) 223 NLRB 867 [92 LRRM 1335]; Retail Clerks, Local 770 (Fines Food Co.) (1977) 228 NLRB 1166 [95 LRRM 1062].

condemned. General Electric (1964) 150 NLRB 192 [57 LRRM 1491]; Morris, Developing Labor Law, p. 305. We further note that section 3549.1 exempts negotiations from the usual public meeting laws and allows the bargaining process to be conducted confidentially between the parties.¹⁵ We consider this as some evidence that the Legislature did not intend to depart from the traditional negotiating format when it enacted EERA.¹⁶

There is nothing in the record here to indicate that Reid

¹⁵Subsection 3549.1(a) through (d) of EERA lists such exceptions:

(a) Any meeting and negotiating discussion between a public school employer and a recognized or certified employee organization.

(b) Any meeting of a mediator with either party or both parties to the meeting and negotiating process.

(c) Any hearing, meeting, or investigation conducted by a factfinder or arbitrator.

(d) Any executive session of the public school employer or between the public school employer and its designated representative for the purpose of discussing its position regarding any matter within the scope of representation and instructing its designated representatives.

¹⁶Although neither party raised it in exceptions or proceedings below, we note that since EERA's enactment, Section 35145.5 of the Education Code was passed. It provides:

It is the intent of the Legislature that members of the public be able to place matters directly related to school district

was attempting to negotiate with the school board or to litigate the issues when she sought to address the board on the advisory arbitration award. We do not know what she intended to say since the District policy prevented her from saying anything. She might have sought only to urge the board to accept or reject the award. The District's policy was patently overbroad and as a result interfered with Reid's protected right to participate in a matter of employer-employee relations and, possibly, to represent unit employees who may have been

business on the agenda of school district governing board meetings, and that members of the public be able to address the board regarding items on the agenda as such items are taken up. Governing boards shall adopt reasonable regulations to insure that this intent is carried out. Such regulations may specify reasonable procedures to insure the proper functioning of governing board meetings.

This subdivision shall not preclude the taking of testimony at regularly scheduled meetings on matters not on the agenda which any member of the public may wish to bring before the board, provided that no action is taken by the board on such matters at the same meeting at which such testimony is taken. Nothing in this paragraph shall be deemed to limit further discussion on the same subject matter at a subsequent meeting.

At the very least, this section precludes a policy which completely restricts an employee's addressing the board on "matters directly related to the school district business." Nevertheless, we conclude that the limited restrictions described above are permitted if the provisions of EERA and the Education Code are to be harmonized.

the subject of her intended remarks. As such, the policy violated subsection 3543.5(a) and (b).

4. The Student-Teacher Ratio

By its terms, Article X of the collective bargaining agreement renders the teacher-pupil ratio somewhat flexible. The ratio is described as a "guideline," rather than as absolute. The contractual commitment is that, "efforts shall be made to maintain" the ratio and that "when schools go beyond the established student-teacher ratio . . ." adjustments will be made as soon as possible to adhere to the established ratio. Both clauses indicate that at least temporary changes in the ratio were contemplated.

There is no indication in the record that the change in ratio proposed to the board of education and ultimately implemented were other than a temporary alteration permitted by the contract or that the District did not intend to return to the contractual ratio as soon as it could. Finding no unilateral change prohibited by law, we dismiss this aspect of the charge.

REMEDY

Certain aspects of the hearing officer's order were not excepted to by either party. Except as otherwise indicated, those matters not excepted to and therefore not considered are adopted by the Board.

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, the Public Employment Relations Board, finds that the San Ramon Valley Unified School District violated subsections 3543.5(a) and (b) of the EERA by unreasonably restricting access by the exclusive representative at four schools, and by enforcing overly broad restrictions on the exclusive representative's right to address the school board in a public meeting. Therefore, the Board hereby ORDERS that the San Ramon Valley School District shall:

A. CEASE AND DESIST FROM:

(1) Violating subsections 3543.5(a) and (b) by restricting and denying access to agents of the exclusive representative to faculty lounges during nonduty hours.

(2) Violating subsection 3543.5(b) by enforcing its rule which prevents representatives of the exclusive representative from addressing the school board on matters relating to employer-employee relations other than for the purpose of negotiating or litigating grievances or arbitrations.

(3) Violating subsection 3543.5(a) by threatening Roberta Gleason with a lawsuit, and violating subsections 3543.5(a) and (b) by making threatening and intimidating statements to her which tended to discourage her from engaging in protected activities and tended to interfere with the right of the Association to represent its members.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

(1) Within seven (7) workdays of the service of this Decision, post at all school sites, and all other work locations where notices to certificated employees customarily are placed, copies of the Notice attached as an Appendix. Such posting shall be maintained for a period of twenty (20) workdays. Reasonable steps shall be taken to ensure that said Notice is not reduced in size, altered, defaced or covered by any other material.

(2) Notify the San Francisco regional director of the Public Employment Relations board, in writing, within 20 calendar days of service of this Decision, of the steps the District has taken to comply herewith.

This ORDER shall become effective immediately upon service of a true copy thereof on the San Ramon Valley Unified School District.

All other charges are hereby DISMISSED.

~~By: Harry Gluck, Chairperson~~ John W. Jaeger, Member

Irene Tovar, Member

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California

After a hearing in Case No. SF-CE-349, San Ramon Valley Education Association, CTA/NEA v. San Ramon Valley Unified School District, in which all parties had a right to participate, it has been found that the San Ramon Valley Unified School District violated subsections 3543.5(a) and (b) by unreasonably restricting access of the Association's representative to the faculty lounges at Walt Disney, Monte Video, Armstrong, and Rancho Romero Schools, during nonworking time and by preventing a representative of the Association from addressing the school board at a public meeting on matters concerning employee-employer relations other than negotiating or litigating grievances and arbitrations. It has also been determined that the District violated subsection 3543.5(a) and (b) by threatening to sue Roberta Gleason after she spoke at a school board meeting and attempting to discourage her from seeking the Association's assistance on employer-employee relations. As a result of this conduct, we have been ordered to post this notice and abide by the following:

We will:

CEASE AND DESIST FROM:

1. Restricting the access of representative of the Association to faculty lounges during nonduty hours;
2. Preventing Association representatives from addressing the school board on matters relating to employee-employer relations, other than for the purpose of negotiating or litigating grievances or arbitrations.
3. Threatening or intimidating Roberta Gleason for engaging in protected activity.

SAN RAMON VALLEY UNIFIED SCHOOL DISTRICT

Dated: _____ By _____
Authorized Representative

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR TWENTY (20) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED BY ANY MATERIAL.