

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SAN JOSE COMMUNITY COLLEGE DISTRICT)
CHAPTER, CTA/NEA,)
)
Charging Party,) Case No. SF-CE-351
)
v.)
) PERB Decision No. 240
SAN JOSE COMMUNITY COLLEGE DISTRICT,)
)
Respondent.) September 30, 1982
)
_____)

Appearances; Paul M. Loya, Attorney (Loya & Associates) for San Jose Community College District; James E. Keller, Attorney (LaCroix & Schumb) for San Jose Community College District Chapter, CTA/NEA.

Before Tovar, Jaeger, and Morgenstern, Members.

DECISION

JAEGER, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by both the San Jose Community College District (District) and the San Jose Community College District Chapter, CTA/NEA (Association).

The District excepts to those portions of the hearing officer's proposed decision finding that the District violated subsections 3543.5(a), (b) and (c) of the Educational Employment Relations Act (the Act)¹ when it unilaterally

¹The Educational Employment Relations Act is codified at Government Code section 3540 et seq. All statutory references are to the Government Code unless otherwise noted.

adopted a tentative school calendar that changed the past practice concerning the date on which the school year begins.

The Association excepts to those portions of the hearing officer's proposed decision finding that: (1) the District did not violate subsections 3543.5(c) by withdrawing 15 days of faculty inservice training, substituting 15 additional days of classroom teaching in its place, and (2) the District did not violate subsection 3543.5 (c) by unilaterally fixing the ending date for the first semester.

FACTS

In 1976, the San Jose Community College District voluntarily joined in an experimental statewide pilot program involving six community college districts. This program, as enacted by the Legislature, waived the Education Code² minimum curriculum requirement of 175 teaching days and allowed the participating districts to adopt school calendars with only 160 days of classroom instruction. The remaining 15 days were devoted to achieving special inservice teacher training, allowing each teacher to develop his/her own 15-day training plan, subject to District approval.

In the 1976 and 1977 school years, the faculty taught 146 days, gave final examinations 14 days and enjoyed the newly

²Education Code section 41420 requires districts to comply with a minimum 175-day instructional calendar in order to qualify for State average daily attendance funds.

created 15 days of inservice training. In 1978 the faculty taught 147 days, gave final examinations 13 days, and again enjoyed the same 15 days of inservice training. In each of these years, the school year began in late August, resulting in final examinations being administered and the semester ending prior to the Christmas holiday recess.³ A significant number of the faculty used the long break between Christmas and the beginning of the second semester to accomplish their inservice training objectives.

On January 16, 1979, the District Board of Trustees met intending to adopt the school calendar for the 1979-80 school year. The trustees determined they would withdraw from the pilot program and return to the regular Education Code 175-day instructional calendar. This was motivated by the increasing number of students requesting remedial assistance.

The Association, learning of the District's proposed calendar change, made a demand to negotiate. The District agreed to negotiate but, due to time constraints, requested that separate negotiations be conducted over the calendar

³The District argues on appeal that these facts do not establish the relevant past practice concerning the starting date for certificated service. The hearing officer found, based on substantial evidence in the record, that the school year had commenced during the last week in August for the three years immediately preceding this charge. He further found that for the two years immediately preceding the District's involvement in the pilot program, the term began in the second week of September. Hence, the facts do not demonstrate that the tentative calendar maintained the status quo.

issue. The Association agreed to this request. It should be noted that the District refrained from adopting a school calendar, in light of the Association's bargaining demand.

At the initial negotiation session on January 22, 1979, the District proposed the same school calendar that was presented to the Board of Trustees for adoption on January 16, 1979. This particular calendar called for 175 instructional days, 163 days of classroom teaching, 12 days of final examinations and no inservice training days. The proposal scheduled the school year to begin on September 4, 1979, with final examinations to commence after the Christmas recess.

At the same session, the Association initially proposed 160 days of instruction, 148 days of classroom teaching, 12 days of final examinations and 15 days of inservice training. The school year, pursuant to this proposal, would begin on the last Monday in August. The Association proposal essentially retained the same pilot program calendar that had been in effect for the three previous years. There was no movement from the parties' respective positions at this meeting.

The next session occurred on January 29, 1981. The Association offered a counterproposal, substituting one additional teaching day for one inservice day: it called for 161 days of instruction, 149 days of classroom teaching, 12 days of final examinations and 14 days of inservice training. The District did not accept or counter. Soon

thereafter the District requested that the PERB declare an impasse. On February 7, 1979, that request was denied by PERB.

The next negotiating sessions occurred on February 8, 1979 and February 16, 1979, but no movement occurred at these sessions.

On February 20, the District adopted a "tentative" calendar for the 1979-80 school year. This calendar provided for the first instructional day of the term to begin on September 4, 1979, the semester to end on January 25, 1980, and the spring instructional semester to begin on February 4, 1980. This calendar required the faculty to teach as a minimum, 163 days with 12 days for final examinations.

The District presented evidence that the adopted calendar was by definition tentative and was only a mechanism to initiate the upcoming school year student registration process. They contend that, as such, it represented merely a flexible framework which was amendable through the negotiation process. In support of its position, the District asserts the fact that the number of days contained in the "tentative" calendar was simply the state minimum for nonpilot program community colleges. Further, the "tentative" nature of the calendar is evidenced by the District's continued involvement in the negotiation process. In fact, the District made a new proposal at the February 26, 1979 session that differed from the adopted calendar. At this session the District offered two

staff development days, ten days of final examinations and 163 days of classroom teaching.

After of the adoption of the tentative calendar the parties continued to negotiate. Subsequent to the District's February 26, 1979 modified proposal the Association countered with a proposal calling for 151 days of classroom instruction, 10 final exam days and 14 inservice days. The proposal maintained the previous Association position on the starting date, ending date and examination period.

The parties continued to meet in five more sessions during the months of March and April which produced no movement. On March 19, 1979, however, the Association filed charges with the Public Employment Relations Board alleging that the District failed to negotiate in good faith, in violation of subsections 3543.5(a), (b) and (c) of the EERA. The factual basis asserted by the Association to demonstrate the alleged bad faith was the adoption of the tentative calendar.

DISCUSSION

The Tentative Calendar

The hearing officer concluded that the District violated subsections 3543.5(a), (b) and (c) when it adopted a tentative school calendar altering the starting date of the school year, thereby failing to meet and negotiate in good faith. Specifically, the hearing officer found that the District

unilaterally altered an established past practice with respect to the beginning and ending date of the first semester.

For the reasons set forth below, the Board reverses the hearing officer's determination.

In Palos Verdes Peninsula Unified School District/Pleasant Valley School District (7/16/79) PERB Decision No. 96, the Board addressed the basic issue of the negotiability of certificated employees' workdays. The Board concluded that the beginning and ending date of certificated service for the school year, the vacation and holiday dates for certificated employees, and extra hour assignments are all matters within the scope of representation⁴ requiring the parties to meet and negotiate in good faith upon demand.

⁴The scope of representation is set forth at subsection 3543.2(a). That subsection states:

(a) 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 certificated personnel has

The District asserts that it was required to adopt a "tentative" calendar in order to set into motion the steps necessary to implement its computer registration system. The "tentative" nature of the calendar is stressed by the District to establish that its conduct was excused by "operational necessity," citing NLRB v. Katz (1962) 369 U.S. 769 [50 LRRM 2177] . We need not reach the question of whether the District had a valid defense to its adoption of a school calendar, since we find, under the facts in this case, that the District's conduct did not affect a matter within the scope of representation. As stated above, in Palos Verdes, supra, we found that the beginning and ending date, vacations and holidays and hours of employment for certificated employees are all within the scope of representation. However, as the Board in Palos Verdes was also careful to point out, "[I]t's clear that the parties here are not attempting to negotiate student attendance dates but only certificated workdays." Palos

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

Verdes, supra at p. 31. Thus nothing in Palos Verdes precludes an employer from adopting a calendar for the purposes of establishing dates of student attendance or other District operations unrelated to dates of certificated service. In this case, the evidence indicates that the District continued to comply with its obligation to negotiate in good faith over dates of certificated service after it had adopted a "tentative" school calendar solely for operational purposes. By so doing, the District fulfilled its duty to negotiate in good faith as required by the Act.

The Substitution of 15 Days of Inservice Training for 15 Additional Days of Classroom Instruction

The tentative calendar adopted by the District on February 20, 1979 did not provide any inservice training days for the certificated faculty. As noted previously, the past practice for the three prior years had been to allow faculty 15 days of inservice training subject to District approval. The hearing officer concluded that the District enjoyed the right to determine what the faculty did on District time. He went on to find that the issue of when the faculty was to teach the additional 15 days of classroom instruction was a matter within the scope of representation because it touched on the subject of hours. He concluded, however, that there was no violation because the Association waived its right to negotiate. This waiver was based on the bargaining position the Association took. The Association maintained throughout the course of

negotiations that the inservice training days should be continued. Therefore it never proposed when the additional teaching days should be scheduled.

We agree with the conclusion the hearing officer reached, but for different reasons.

Consistent with our past decisions, we find that the Association failed to prove that the substitution of teaching days for inservice days affected a matter within the scope of representation. There is no evidence in the record to indicate that the District's actions required certificated personnel to work more days, nor did it lengthen the working day, increase the number of working days per year, or affect the distribution of workdays. Moreover, the evidence fails to indicate that the discontinuation of the program increased preparation time or caused employees to use any duty-free or off-duty time to meet professional development requirements. Palos Verdes, supra; San Mateo City School District (5/20/80) PERB Decision No. 129; Sutter Union High School District (10/7/81) PERB Decision No. 175. Certificated personnel were previously paid to work 15 days per year at inservice training; the calendar that was adopted requires teaching during those days instead. Therefore, there was no evidence presented to prove that the District's actions impacted a subject within the scope of representation. As to those issues related to the discontinuation of the inservice program which did affect

matters within the scope of representation, the evidence indicates that the parties continued to negotiate in good faith.

This matter only concerns whether the District finds that the needs of the students for the regular 175 days of classroom instruction outweigh the faculty needs for District-sponsored inservice training. We conclude that this decision is properly reserved to the District.

Since we conclude that the District made no unlawful unilateral change we need not concern ourselves with the District's contention that the Association waived its right to negotiate over the elimination of inservice training days.

ORDER

Based on the foregoing Decision and the entire record in this case, the Public Employment Relations Board ORDERS that the unfair practice charges in Case No. SF-CE-351 be DISMISSED.

Members Tovar and Morgenstern, concurred.