STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SAVANNA SCHOOL DISTRICT,	)	
	)	
Charging Party,	)	Case No. LA-CO-204
	)	
v.	)	PERB Decision No. 276
	)	
SAVANNA DISTRICT TEACHERS ASSOCIATION,	)	December 31, 1982
	)	
Respondent.	)	

Appearances: Steven J. Andelson and Brian M. Libow, Attorneys (Atkinson, Andelson, Loya, Ruud & Romo) for Savanna School District; A. Eugene Huguenin, Jr., Raymond L. Hansen and Charles R. Gustafson, Attorneys for Savanna District Teachers Association.

Before Tovar, Jaeger and Morgenstern, Members.

DECISION

TOVAR, Member: The Savanna School District appeals a hearing officer's dismissal of its charge that the Savanna District Teachers Association violated subsection 3543.6(c) of the Educational Employment Relations Act (EERA)[1] by including

[1]The EERA is codified at Government Code section 3540 et seq. All statutory references herein are to the Government Code unless otherwise indicated.

Section 3543.6(c) provides as follows:

> It shall be unlawful for an employee organization to:
>
> 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.

on its negotiating team employees of several neighboring school districts. The attached Notice of Dismissal, issued by the hearing officer, is based on the hearing officer's conclusion that the charge fails to allege a prima facie violation of the EERA.

On review, the Public Employment Relations Board has considered the hearing officer's Notice of Dismissal, the Savanna School District's appeal thereof and the entire record in this case. Finding no prejudicial error of law or procedure in the Notice of Dismissal, we summarily affirm the hearing officer's determination to dismiss the charge and adopt her conclusions of law set forth in the Notice of Dismissal as those of the Board itself.

ORDER

Upon review of the entire record in this case, the Public Employment Relations Board ORDERS that the charge filed in Case No. LA-CO-204 is DISMISSED without leave to amend.

Members Jaeger and Morgenstern joined in this Decision.

STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

SAVANNA SCHOOL DISTRICT, Charging Party, v. SAVANNA DISTRICT TEACHERS ASSOCIATION, Respondent.	)	Case No. LA-CO-204 NOTICE OF REFUSAL TO ISSUE COMPLAINT AND DISMISSAL WITH LEAVE TO AMEND

NOTICE IS HEREBY GIVEN that no complaint will be issued in the above-captioned unfair practice charge and that it is hereby DISMISSED with leave to amend within twenty (20) calendar days after service of this Notice. This action is taken on the ground that the charge fails to allege a prima facie violation of the Educational Employment Relations Act (hereafter EERA).[1]

PROCEDURAL HISTORY

Savanna School District (hereafter charging party or District) filed this charge on September 1, 1981, alleging a violation of section 3543.6(c). The essence of the allegation is that Savanna District Teachers Association (hereafter respondent or Association), which is the exclusive

[1]Government Code section 3540 et seq. All statutory references are to the California Government Code unless otherwise specified.

representative of a unit of certificated employees of the District, has failed and refuses to meet and negotiate in good faith by including, as permanent members of its contract negotiating team, two employees who are not members of the District bargaining unit represented by the respondent. Instead, these persons are members of bargaining units in neighboring school districts. Allegedly, the Association has insisted on the presence of these persons as a condition of continuing negotiations with the District. The District asserts that the inclusion of non-bargaining unit representatives on the Association's negotiating team is an unlawful attempt by the respondent to

> implement a multi-employer bargaining unit under the auspices of coordinated bargaining . . . which . . . impedes and undermines, and continues to impede and undermine, and, further, has the effect of impeding and undermining the progress and resolution of issues in negotiations by injecting outside concerns, issues and philosophies which are not necessarily related to the goals, objectives and needs of the Employer's certificated bargaining unit employees.

DISCUSSION

The essence of this charge is that the Association has violated section 3543.6(c) by engaging in or attempting to engage in "coordinated bargaining" which is also known as coalition or regional bargaining.[2]

---

[2]See Morris, The Developing Labor Law '1971), p. 283.

Section 3543.6(c) makes it unlawful for an employee organization to:

> (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.

Since the PERB has not had occasion to decide the question of the legality of coordinated bargaining within the meaning of section 3543.6(c), it is appropriate to look to federal precedent for guidance.[3] In private sector labor relations, coordinated bargaining has generated much case law supporting the concept.[4] Under section 8(a)(5) of the Labor Management Relations Act[5] (hereafter LMRA), the National Labor Relations Board (hereafter NLRB) and the federal courts have formulated a test for determining the legality of coordinated bargaining as a bargaining tactic. That test, which is based on a case involving an employer's refusal to bargain because of objections to outsider members of the union negotiating committee, requires a showing of a "clear and present danger to the bargaining process." See General Electric Co. v.

---

[3] Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608 [87 LRRM 2453].

[4] See, for example, General Electric Co. v. NLRB (2d Cir. 1969) 412 F.2d [71 LRRM 2418]; Standard Oil Co. v. NLRB (6th Cir. 1963) 322 F.2d 40 [54 LRRM 2007]; International Brotherhood of Teamsters (2d Cir. 1960) 284 F.2d 893 [47 LRRM 2089].

[5] 29 U.S.C, sec. 158(a)(5).

NLRB, supra, 71 LRRM at 2424. In this same case, the NLRB had earlier held that a mixed-union negotiating committee is not per se improper and that absent a showing of "substantial evidence of ulterior motive or bad faith," a union's right to select its negotiating committee cannot be qualified because of the mere possibility that the presence of "outsiders" is inherently disruptive of the bargaining process. See General Electric Co. (1968) 173 NLRB No. 46 [69 LRRM 1305]. The Second Circuit, in upholding the NLRB's order, declared that the "rights of employees [section 7 of the NLRA] and the corresponding right of employers [section 8(b)(1)(B) of the NLRA] to choose whomever they wish to represent them in formal labor negotiations is fundamental to the statutory scheme."[6]

Section 3543 gives public school employees the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters related to employer-employee relations. Even though the language of section 3543 is not precisely the same as that of section 7 of the NLRA, which guarantees to employees "the right to bargain collectively through representatives of their own choosing," it is similar enough to conclude that the General Electric doctrine is

---

[6]General Electric Co. v. NLRB, op. cit., 71 LRRM at 2421.

applicable to charges of alleged coordinated bargaining by public school employees and their representatives.

Applying this test to the present case, it is concluded that respondent's conduct, as alleged, does not present a "clear and present danger to the bargaining process" between the parties. Although it is alleged that continued negotiations have been conditioned on the presence of the non-bargaining unit representatives, there is no allegation that the Association has actually failed or refused to meet and negotiate because of the District's objections to the inclusion of "outsiders." And, finally, the complaint that the presence of "outsiders" impedes and undermines the negotiating process is not supported by any concrete examples of disruptions to the process that would demonstrate "ulterior motive or bad faith" on the part of the Association. In the absence of more specific allegations, the respondent's conduct does not rise to the level of an unfair practice.

This dismissal with leave to amend is issued pursuant to PERB Regulation 32630(a). If the charging party chooses to amend, the amended charge must be filed with the Los Angeles Regional Office of the PERB within twenty (20) calendar days. (PERB Regulation 32630(b).) Such amendment must be actually received at the Los Angeles Regional Office of the PERB before the close of business (5:00 p.m.) on October 13, 1981 in order to be timely filed. (PERB Regulation 32135.)

If the charging party chooses not to amend the charge, it may obtain review of the dismissal by filing an appeal to the Board itself within twenty (20) calendar days after service of this Notice. (PERB Regulation 32630(b).) Such appeal must be actually received by the Executive Assistant to the Board before the close of business (5:00 p.m.) on October 13, 1981 in order to be timely filed. (PERB Regulation 32135.) Such appeal must be in writing, must be signed by the charging party or its agent, and must contain the facts and arguments upon which the appeal is based. (PERB Regulation 32630(b).) The appeal must be accompanied by proof of service upon all parties. (PERB Regulations 32135, 32142 and 32630(b).)

Dated: September 23, 1981

WILLIAM P. SMITH
Chief Administrative Law Judge

By
W. Jean Thomas
Hearing Officer