STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

MARYSVILLE UNIFIED TEACHERS ASSOCIATION, CTA/NEA,	)	
Charging Party,	)	Case No. S-CE-133
v.	)	PERB Decision No. 314
MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT,	)	May 27, 1983
Respondent.	)	

Appearances; Diane Ross, Attorney for the Marysville Unified Teachers Association, CTA/NEA; W. Craig Biddle (Biddle, Walters & Bukey), Attorney for the Marysville Joint Unified School District.

Before Gluck, Chairperson; Jaeger and Burt, Members.

DECISION

This case is before the Public Employment Relations Board (PERB) on exceptions filed by the Marysville Joint Unified School District (District) to a hearing officer's proposed decision finding that it violated subsections 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA) by unilaterally increasing teachers' hours of employment.[1]

[1]EERA is codified at Government Code section 3540 et seq. All references are to the Government Code unless otherwise indicated. Section 3543 provides, in relevant part:

> It shall be unlawful for a public school employer to:

We have reviewed the hearing officer's proposed decision in light of the entire record, and reverse his finding that the District violated subsections 3543.5(a), (b) and (c). Accordingly, the charge is dismissed.

FACTS

From 1970 through the summer of 1978, the District employed classified employees to perform noontime supervision of students. During that time, teachers had a duty-free lunch period, which was conterminous with the students' 50 to 55-minute lunch period. Teachers did, however, perform yard supervision duties before and after school, and during recess.

In 1976, the District and the Marysville Unified Teachers Association, CTA/NEA (Association) entered into a collective bargaining agreement, which expired on June 30, 1978. Section 8.4 of that agreement provided, in relevant part:

> Every certificated employee shall be entitled to one duty-free lunch break of no less than 30 minutes each day.

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

In April of 1978, the parties began negotiations on a successor agreement. The issue of noon duty supervision was not addressed in the parties' negotiations between April 1978 and June 6, 1978. On June 6, 1978, the voters approved Proposition 13, which caused concern that an extreme budgetary crisis was imminent.

On June 14, 1978, the District informed the Association that it was considering taking action to freeze salaries and increase class size. On June 16, the parties met to discuss the District's proposed emergency resolutions. Andre Douyon, spokesperson for the Association, presented a proposal intended to maintain class size at the existing level. That proposal provided:

> In order to maintain PTR, which is in the best interest of our students, we, the Marysville Unified Teachers Association, hereby propose the following:
>
> 1. The Marysville Joint Unified School District shall re-hire all recently released temporary teachers.
> Cost . . . . Approximately $180,000
>
> 2. Replace all retiring teachers.
> Cost . . . . Already budgeted.
>
> In order to fund the above the following cost-avoidance proposals are made:
>
> 1. All conference monies shall be eliminated.
> Cost avoidance . . . . $100,000.
>
> 2. All bus drivers' overtime be eliminated.
> Cost avoidance . . . . $34,000.

3. All campus supervisors be eliminated.
Cost avoidance . . . . $29,500.

4. All noon-duty supervisors be eliminated.
Cost avoidance . . . . $44,155.

TOTAL COST AVOIDANCE . . $207,745.

As part of this proposal, teachers would assume noontime supervision duties. It is unclear whether the parties ever negotiated the June 14 proposal. Heidi Williamson, the District's chief negotiator at that time, testified that the District took the proposal "under advisement."

On August 1, 1978, the District adopted budget cuts, pursuant to which it laid off all noon duty supervisors. Although the record is unclear as to the exact date, sometime between August 1 and the start of school in September 1978, the District directed school principals to work out individual plans by which teachers would be assigned to perform noontime supervision duties previously performed by the laid-off classified employees. In September, 1978, teachers were assigned noon supervision duties on a rotating basis at various schools throughout the District.

The Association presented the testimony of a number of teachers who indicated that their assignment to noontime supervision duties from September 1978 onward decreased their lunch period from 50 to 55 minutes to 30 minutes and, in some circumstances, to less than 30 minutes. Assistant Superintendent Leonard Larson, who testified on behalf of the

District, did not deny that teachers' lunch hours were reduced to 30 minutes when they were assigned to noon yard supervision duties. However, he testified that, when the proper procedures were followed, teachers would receive no less than 30 minutes for lunch.

Meanwhile negotiations continued on the successor agreement. On August 25, 1978, the parties reached tentative agreement on a contract provision relating to "hours of employment." That provision stated:

> 8.1 The workday for all employees shall begin 30 minutes before the time at which classes at the assigned school/schools are to begin in the morning.
>
> 8.2 The length of the day may vary at the various schools, however, the workday for employees in the unit shall not exceed 8 hours per day including staff meetings, open house, parent-teacher conferences or back to school night.
>
> 8.3 Every employee in the unit shall be entitled to one duty-free lunch period of thirty consecutive minutes each day and in addition, the principal shall establish a method of providing relief time for employees during the work day.

The parties did not, however, reach final agreement as to the issue of hours of employment at that time.

On October 23, 1978, the Association amended a previous unfair practice charge to allege that the assignment of teachers to perform noon supervision duties constituted an unlawful unilateral change in their hours of employment.

On November 27, 1978, the parties held an informal settlement conference relating to the various unfair practice charges, including the October, 1978 amendment. The parties agreed to a partial settlement, in which the District was to assume the full cost of dependent insurance coverage and the Association was to withdraw the charges it had filed concerning the District's alleged unilateral change of insurance coverage and class size. In addition, the parties agreed to hold the charge in this case "in abeyance . . . while the parties continue negotiations toward a contract".[3]

On November 28, 1978, the parties met to continue negotiations on the successor agreement. At that time, the Association proposed that all release periods be duty-free. No agreement was reached on that date.

3The partial settlement agreement provided, in relevant part:

> Further litigation on the remaining portion of charge S-CE-133, in both original and amended forms, is to be placed in abeyance by the Public Employment Relations Board while the parties continue negotiations toward a contract.
>
> By this agreement neither party waives, alters or limits its negotiation position on any matter addressed in charge S-CE-133 and its amendment.
>
> The subjects of dependent Blue Cross insurance coverage, class size, substitute teachers and teacher supervision of students during lunch periods and recess remain issues before the parties at the negotiating table.

At the January 17, 1979 negotiating session, the Association proposed that noon and recess supervision would be voluntary and that, when such assignments were accepted, teachers would be entitled to an additional $10 per hour for the time worked. On January 24, 1979, the District countered with a proposal requiring all supervision duties to be completed within an employee's required work hours.

In March of 1979, the parties reached impasse. Thereafter, the parties entered mediation and factfinding with noontime supervision duties being one of the issues. The factfinding report did not address the issue of noontime supervision. After factfinding, the parties continued to negotiate the subject of noon supervision and hours of employment.

On September 18, 1979, the parties agreed to a new three-year contract, retroactive to July 1, 1979 and effective through June 30, 1982.

The agreement contains a provision relating to lunch periods which is identical to that contained in the previous agreement.

DISCUSSION

The hearing officer found that the District's decrease in the teacher duty-free lunch period constituted an unlawful unilateral change of hours and, as such, violated its duty to negotiate in good faith. Pajaro Valley Unified School District (5/22/78) PERB Decision No. 51; NLRB v. Katz (1962) 369 U.S. 736 [50 LRRM 2177].

The District excepts to the hearing officer's finding that the reduction of teachers' duty-free lunch period constituted an unlawful unilateral change. It argues that the 1976-1978 collective agreement established a minimum 30-minute teacher lunch period, and that the District's reduction of teacher lunch periods to 30 minutes was permitted by the terms of that agreement.

The hearing officer found that, since the 1976-1978 agreement entitled teachers to "one duty free lunch break of no less than 30 minutes each day," it merely established a minimum lunch period. The contract was, therefore, silent as to the maximum duty-free lunch period to which teachers were entitled. He thus turned to past practice to ascertain the nature of established policy in the District. He found that from 1970 through 1978, the consistent practice in the District had been to grant teachers a duty-free lunch break equivalent to the 55-minute lunch break enjoyed by students. He concluded that the unilateral assignment of teachers to noon supervision duties, and the resulting decrease in the length of their duty-free lunch period, increased their overall hours of employment.

An employer violates its duty to negotiate in good faith when it unilaterally changes an established policy affecting a negotiable subject matter without affording the exclusive representative a reasonable opportunity to bargain. Grant

Joint Union High School District (2/26/82) PERB Decision No. 196; Pajaro Valley Unified School District, supra; NLRB v. Katz, supra. Established policy may be embodied in the terms of a collective agreement (Grant Joint Union High School District, supra.) or, where a contract is silent or ambiguous as to a policy, it may be ascertained by examining past practice or bargaining history. (Rio Hondo Community College District (12/31/82) PERB Decision No. 279; Pajaro Valley Unified School District, supra.) However, where contractual language is clear and unambiguous, it is unnecessary to go beyond the plain language of the contract itself to ascertain its meaning.

Contrary to the hearing officer's determination, we find the lunch break provision of the 1976-1978 agreement to be clear and unambiguous on its face. That provision guaranteed employees a duty-free lunch period of no less than 30 minutes each day. There is nothing in the provision which prevents management from granting teachers a lunch period in excess of 30 minutes; nor conversely, does the provision prohibit management from assigning teachers to a lunch period of just 30 minutes in length. Consistent with that provision, the District had, in the past, permitted teachers to take a lunch break which exceeded 30 minutes in length. In the fall of 1978, the District assigned teachers to noon yard supervision duties on a rotating basis. On the days that they were

assigned to those duties, teachers' lunch periods were shortened to 30 minutes in length. Therefore, there is no basis on which we can conclude that management acted in a manner inconsistent with its contractual obligations.

The hearing officer's finding that the plain meaning of the contract was superseded by the parties' past practice is based on an inference unsupported by the record. The Association introduced no evidence concerning the history of negotiations which led up to the adoption of the 1976-1978 agreement. Absent any evidence of bargaining history, we cannot infer that the parties intended to attach a meaning to the hours provision of their agreement contrary to its plain meaning. Moreover, the Association's argument that the 1976-1978 agreement merely formalized the preexisting practice of granting teachers a 55-minute lunch is undercut by the very fact that it agreed to a contract provision establishing a lunch period of a lesser duration. The mere fact that an employer has not chosen to enforce its contractual rights in the past does not mean that, ipso facto, it is forever precluded from doing so. Rio Hondo Community College District, supra. Accordingly, we find that the Association, by agreeing to a contractual provision which plainly permitted the District to grant teachers a lunch period of 30 minutes or longer at its discretion, waived its right to negotiate over the District's reduction of the lunch period to 30 minutes.

ORDER

Upon the foregoing decision, and the entire record in this matter, it is hereby ORDERED that the unfair practice charge in Case No. LA-CE-133 is hereby DISMISSED.

By the BOARD