STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

TEACHERS ASSOCIATION OF LONG BEACH, Charging Party, v. LONG BEACH UNIFIED SCHOOL DISTRICT, Respondent.	Case No. LA-CE-1634 PERB Decision No. 325 July 8, 1983

Appearances: Michael R. White, Attorney for Teachers Association of Long Beach.

Before Gluck, Chairperson; Jaeger and Morgenstern, Members.

DECISION

GLUCK, Chairperson: The Teachers Association of Long Beach (TA) appeals the dismissal of its charge for failure to state a prima facie case. The charge states that, pursuant to a reorganization of its special education programs, the Los Angeles County Superintendent of Schools transferred certain teachers to the Long Beach Unified School District (District). Details of this action are not given. The charge does state that the TA filed a writ of mandamus in the Los Angeles County Superior Court in August 1982 alleging that the District violated sections 44903.7 and 45028 of the California Education Code by not granting to the transferred employees "appropriate seniority, salary and other benefits." The relief asked of the

court, and now of the Public Employment Relations Board (PERB), includes: (1) granting seniority and other rights and privileges to avoid penalizing the transferred employees; (2) restoration of compensation unlawfully withheld and (3) placement of the employees on seniority and salary steps to avoid such penalty.

The court dismissed the writ, concluding that because the case involved wages, the TA must exhaust its administrative remedy at PERB. The TA then filed this charge alleging that the District violated subsections 3543.5(a), (b), (c) and (d) of the Educational Employment Relations Act (EERA)[1]. The regional attorney who processed the charge found it insufficient and gave TA 30 days to furnish additional facts. Upon TA's failure to respond within the time provided, the regional attorney dismissed the charge with leave to amend. The TA then filed this appeal "in order to exhaust its administrative remedies." The District did not respond.

DISCUSSION

The charge is perfunctory at best and, although citing all of the employer unfair practice sections of the Act, provides no facts establishing our jurisdiction. It refers to violations of the Education Code. It is true that the sections

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[1]EERA is codified at Government Code section 3540 et seq. Section 3543.5 defines the various employer unfair practices.

of that Code cited contain references to matters which are within the range of EERA's scope provisions: wages and transfer policy.[2] Nevertheless, although we are obligated to harmonize provisions of the Code and EERA, we are not empowered to enforce the first of these Acts. We are limited to determining whether Long Beach, the receiving District, by accepting the transfers, unlawfully interfered with any EERA rights granted to the employees or TA, or breached its statutory duty to bargain in good faith on matters related to the transfers on which it had the authority to act.

It is at least arguable that the County Superintendent of Schools, which initiated the transfers, was obligated to notify the TA of its intentions and afford it the opportunity to negotiate on matters within its authority[3]. But the charge is against the receiving district. TA may have the right to negotiate with the District the wages and other unidentified "rights and privileges" to which the transferees would be entitled on their new jobs.[4] But, unlike the employer whose

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[2]See section 3543.2 which lists those subjects within the scope of mandatory negotiations.

[3]San Mateo County Community College District (6/8/79) PERB Decision No. 94; Katz v. NLRB (1962) 369 U.S. 736 [50 LRRM 2177]. Also, Grant Joint Union High School District (2/26/82) PERB Decision No. 196.

[4]We do not decide here whether the cited Education Code provisions preempt the District's duty to negotiate. See San Mateo City School District v. PERB; CSEA v. PERB; Healdsburg Union High School District v. PERB ____ Cal 3d ____, SF 24401.

actions alter the status quo, the District was not obligated to take the initiative with respect to providing notice and opportunity to bargain. Analogous to the obligation confronting a newly certified organization, TA had the initial burden of demanding negotiations on behalf of the District's new employees. The charge fails even to hint that TA made such an effort, its only action, several months after the transfers, being to proceed directly to court. Failure to request negotiations on the impact of a managerial decision is fatal to a later charge (Newman-Crows Landing Unified School District (6/30/82) PERB Decision No. 223).

The TA did not act on the opportunities afforded by the regional attorney to amend, or furnish facts in support of, its conclusory charge. It has yet to claim that it demanded negotiations or that a contract provision or existing negotiable policy has been altered without notice and opportunity to bargain. Rather, it single-mindedly insists that the Education Code has been violated and it wants compliance with that Code through the courts. We interpret TA's position as contending that the relief it seeks is mandated by Code provisions which supersede those of EERA requiring negotiations on certain matters. Whether its interpretation of either Act is correct is immaterial; TA has failed to state a prima facie case of violation of any of the EERA sections it cites in its charge.

ORDER

The charge filed by the Teachers Association of Long Beach against the Long Beach Unified School District is DISMISSED without leave to amend and no complaint shall issue thereon.

Members Jaeger and Morgenstern joined in this Decision.

STATE OF CALIFORNIA

EDMUND G. BROWN JR., Governor

PUBLIC EMPLOYMENT RELATIONS BOARD
Sacramento Regional Office
1031 18th Street, Suite 102
Sacramento, California 95814
(916) 322-3198

October 19, 1982

Michael White, Esq.
Attorney for Teachers Association
of Long Beach
P.O. Box 92888
Los Angeles, CA 90009

Re: Teachers Association of Long Beach v. Long Beach Unified School District, Charge No. LA-CE-1634

Dear Mr. White:

I indicated to you in my letter dated October 7, 1982 that this charge does not state a prima facie case and that unless you amended the charge to state a prima facie case or withdrew it prior to October 14, 1982, it would be dismissed without leave to amend.

I have not received any communication from you and am, therefore, dismissing the charge, without leave to amend, for the following reasons.

The above-referenced charge alleges that the Long Beach Unified School District (District) has violated, misinterpreted, and misapplied Education Code sections 44903.7 and 45208 resulting in the granting of inappropriate seniority, salary and other benefits to employees transfered pursuant to the legislative reorganization of special education programs under Chapter 797 of the Statutes of 1980. This conduct is alleged to violate sections 3543.5(a), (b), (c) and (d) of the Educational Employment Relations Act (EERA).

My investigation has revealed the following. In 1981, pursuant to Chapter 797 of the Statutes of 1980, eighteen special education teachers who had been employees of Los Angeles County became employees of the District. In April 1982 the Teachers Association of Long Beach (Association) demanded the District apply Education Code section 44903.7[1] to these teachers and the District refused. The Association does not allege that the District's conduct was motivated by employee union activity.

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[1]Education Code section 44903.7 provides certain rights to a certificated employee who is performing service for one employer and is terminated, reassigned, transfered, or is made an employee of another employer because of the reorganization of special education programs pursuant to Chapter 797 of the Statutes of 1980.

On August 10, 1982 the Association filed a Petition for Writ of Mandate in the Los Angeles County Superior Court alleging violations of Education Code sections 44903.7 and 45028. The court denied the Petition on September 2, 1982. The instant unfair practice charge was filed on September 13, 1982.

Based on the facts above, the charge does not state a prima facie violation of the EERA. The substance of the charge is that the District refuses to comply with Education Code sections 44903.7 and 45208. As explained below, such refusal, without more, does not violate the EERA.

First, you have alleged that the Respondent's conduct has violated EERA section 3543.5(a). Violation of that section requires allegations that: (1) an employee has exercised rights under the EERA; (2) the employer has imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained, or coerced the employee because of the exercise of rights guaranteed by the EERA. Carlsbad Unified School District (1/30/79) PERB Decision No. 89; Novato Unified School District (4/30/82) PERB Decision No. 210.

There are no facts alleged in the charge, nor were any facts discovered during the investigation, which indicate that the District was acting because of the employees' exercise of rights guaranteed by the EERA. Thus, the charge does not state a prima facie violation of EERA section 3543.5(a).

Second, to state a prima facie violation of EERA section 3543.5(b) requires a showing that the employer has denied to an employee organization its rights guaranteed to it under the EERA. There are no facts which demonstrate that the District has denied the Association any rights guaranteed by the EERA. Thus no prima facie violation of EERA section 3543.5(b) is presented by this charge.

Third, in determining whether a party has violated section 3543.5(c) of EERA, the Public Employment Relations Board (PERB) utilizes either the "per se" or the "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. Stockton USD (11/3/80) PERB Decision No. 143. There are no facts alleged or discovered during the investigation which

indicate that the District has violated its duty to bargain in good faith under either the "totality of conduct" or the "per se" test. Thus, there is no prima facie violation of EERA section 3543.5(c).

Fourth, violation of section 3543.5(d) requires a showing that the employer has dominated or interfered with the formation or administration of the employee organization, contributed financial or other support to it, or encouraged employees to join one organization in preference to another. There are no allegations in the charge nor were facts discovered during the investigation which demonstrate that the District has engaged in such conduct. Thus, there is no prima facie violation of EERA section 3543.5(d).

For these reasons, charge number LA-CE-1634, as presently written, does not state a prima facie case. Indeed, going beyond your allegations of violations of EERA sections 3543.5(a, (b), (c) and (d), I further conclude that the conduct alleged in the charge also does not appear to violate any other provision of the EERA. Rather, it merely involves allegations that the District violated two sections of the Education Code. PERB does not have jurisdiction to adjudicate such disputes, the proper forum being the courts of this state.

Pursuant to Public Employment Relations Board regulation section 32635 (California Administrative Code, title 8, part III), you may appeal the refusal to issue a complaint (dismissal) to the Board itself.

Right to Appeal

You may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal (section 32635(a)). To be timely filed, the original and five (5) copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) on November 8, 1982, or sent by telegraph or certified United States mail postmarked not later than November 8, 1982 (section 32135). The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five (5) copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal (section 32635(b)).

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany the document filed with the Board itself (see section 32140 for the required contents and a sample form). The document will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

Extension of Time

A request for an extension of time in which to file a document with the Board itself must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party (section 32132).

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Very truly yours,

DENNIS M. SULLIVAN
General Counsel

By
Robert Thompson
Regional Attorney