STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

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| PALO VERDE TEACHERS ASSOCIATION, Charging Party, v. PALO VERDE UNIFIED SCHOOL DISTRICT, Respondent. | ) | Case No. LA-CE-1527<br>PERB Decision No. 354<br>October 28, 1983 |

Appearances: Charles R. Gustafson, Attorney for Palo Verde Teachers Association; Ronald C. Ruud (Atkinson, Andelson, Loya, Rudd and Romo), Attorney for Palo Verde Unified School District.

Before Gluck, Chairperson; Morgenstern and Burt, Members.

## DECISION

BURT, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Palo Verde Teachers Association (Association) to the proposed decision of the Administrative Law Judge (ALJ) and a response to those exceptions filed by the Palo Verde Unified School District (District). The ALJ dismissed charges filed by the Association alleging that the District violated subsections 3543.5(a), (b), and (c) of the Educational Employment Relations Act (EERA)[1] by unilaterally switching the date of a teacher

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

catch-up day in response to the legislative enactment of Martin Luther King, Jr. (MLK) Day.

The ALJ found that no unilateral change had occurred because the District had altered only the duties of teachers on the two days, without affecting matters within the scope of representation, i.e., wages, hours, etc.[2]

The Association excepts, alleging that the switch in days was an unlawful unilateral change in violation of the agreement of the parties, and alleging as well a violation because of the District's refusal to negotiate about the consequences of legislation establishing MLK Day as a holiday. The District defends the ALJ's decision, reiterating that there was no change of matters within scope, and additionally alleging that

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[2]Subsection 3543.2(a) states in pertinent part:

> (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. . . .

the Association waived any right to negotiate by its failure to submit a proposal.

We have reviewed the record as a whole in light of the exceptions filed by the Association and the District's response thereto. For the reasons set forth below, we affirm the result reached by the the ALJ.

## FACTS

We find the ALJ's findings of fact to be complete and free from prejudicial error. We therefore adopt them as those of the Board.

In June of 1981, the Association and the District agreed in contract negotiations to an hours article in the contract referencing a calendar for the school year which reflected the parties' agreement about days of work and holidays for the 1981-82 school year. That calendar reflected that Friday, January 15, 1982, was to be the last day of the fall semester.

The following Monday, January 18, was to be a teacher catch-up day on which teachers could complete their records for the fall semester before beginning the spring semester on January 19. Students were not to be present on January 18, but teachers were expected at school on that day.

Subsequent to the parties' agreement, the Legislature enacted legislation establishing Friday, January 15, 1982, as MLK Day. The Association claims that the holiday was for

certificated personnel as well as for students. The District claims that the holiday was to be for students only.

In October 1981, the president of the Association and the superintendent spoke informally several times about the necessity to "do something about" the upcoming holiday. The superintendent suggested that the District could simply designate January 15 as the catch-up day for teachers, and a holiday for students, with the semester to begin on January 18, which would be a normal student day. The Association president did not oppose this suggestion, but maintained merely that the matter should be negotiated. However, negotiations never took place.

On December 1, 1982, the school board unilaterally changed the calendar to provide that January 15 would be a holiday for students and a catch-up day for teachers. January 18 would be the beginning of the new semester and a normal day. The effect of the change was to switch the teachers' catch-up day from Monday to the previous Friday, and to establish a normal student day on Monday rather than Friday. The total hours required of teachers were not affected, nor were the teachers' duties altered except to switch them between the two days. (There was some testimony from the Association president that he had heard that teachers at one school were required to do in-service on the holiday, and thereby lost their catch-up time. The ALJ dismissed this evidence as unsupported hearsay, and the Association does not except.)

## DISCUSSION

The Association claims that the District violated EERA by its refusal to negotiate the observance of MLK Day.

As the Association urges, PERB has in the past found that holidays are within the scope of representation under EERA. School District (7/16/79) PERB Decision No. 96. Here, however, the parties were signatory to a negotiated agreement providing that the working year would include 180 working days, including the agreed-upon holidays as set forth in the calendar attached to the agreement. The language of the contract is clear and unambiguous and, consequently, the District was entitled to refuse to re-negotiate the holiday issue. South San Francisco Unified School District (9/2/83) PERB Decision No. 343.

The Association suggests that the ambiguous action of the Legislature altered the status quo so as to require re-negotiation of holidays, but we cannot find that the District was obligated to negotiate with the Association about the meaning of Legislature's action. If the Association wished to establish that the Legislature had intended another paid holiday for certificated personnel, it could have done so through judicial action. Otherwise it was bound by the contractual bargain it made.

The Association also claims that the District made an unlawful unilateral change by switching the catch-up day (not a holiday) from Monday to the preceding Friday. The ALJ rejected

that argument, citing the Board's decision in San Jose Community College District (9/30/82) PERB Decision No. 240. In that case the Board found no unlawful unilateral change when the District substituted 15 student days for an equal number of in-service days, with no demonstrated impact on matters within scope. Similarly in this case, the effect of the change of the teacher catch-up day was simply to switch duties on a consecutive Friday and Monday, without affecting teachers' wages or hours. There is no indication that the action by the District required teachers to work more days or longer days, or that it increased the number of working days per year, or the amount of preparation time required.

The Association claims that in negotiations it had bargained for the catch-up day on January 18 instead of January 15 because it was a "better day", thus implying some impact on teachers other than a change in duties. There is no support for this conclusion in the record.

Since it has not been shown that the switch in days affected negotiable matters, we agree with the ALJ that there was no unlawful unilateral change.[1]

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[3] It would appear that the switch of the date of the teacher catch-up day is a violation of the negotiated agreement between the parties and, in some cases, such a breach may constitute a violation of EERA. Grant Joint Union High School District (2/26/82) PERB Decision No. 196. However, as a threshold matter, the charging party must show that the alleged change concerned a matter within the scope of representation. Grant supra; Allied Chemical Workers v. Pittsburgh Plate Glass Co.;. (1971) 404 U.S. 157.

The Association relies on San Mateo County Community College District (6/8/79) PERB Decision No. 94, and San Francisco Community College D No. 105, to the effect that an employer may not make unilateral changes without bargaining just because the effect of legislation is unclear (in those cases, Proposition 13). Those cases are clearly distinguishable from this, since in San Mateo and San Francisco, supra, the districts made massive unilateral changes in response to their fears about the impact of Proposition 13. Here, as found above, there was no demonstrated change of matters within scope.

## ORDER

Based on the foregoing discussion, conclusions of law and the entire record in this matter, the unfair practice charge filed by the Palo Verde Teachers Association against the Palo Verde Unified School District is hereby DISMISSED.

Chairperson Gluck and Member Morgenstern joined in this Decision.