STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS CHAPTER #620,	)	
Charging Party,	)	Case No. LA-CE-1691
v.	)	PERB Decision No. 376
CONEJO VALLEY UNIFIED SCHOOL DISTRICT,	)	February 7, 1984
Respondent.	)	

Appearances: Patricia L. Roy, Field Representative for California School Employees Association and its Chapter #620; Bruce A. Barsook, Attorney (Liebert, Cassidy & Frierson) for Conejo Valley Unified School District.

Before Tovar, Jaeger and Morgenstern, Members.

DECISION

TOVAR, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the California School Employees Association and its Chapter #620 (CSEA) from the determination of a PERB regional attorney that its charge should be dismissed. The regional attorney refused to issue a complaint and dismissed the charge on the grounds that PERB must defer its jurisdiction over this labor relations dispute in favor of the binding arbitration procedure prescribed by the parties' collectively negotiated agreement. For the reasons which follow, we affirm the dismissal of the charge.

PROCEDURAL HISTORY

On November 26, 1982, CSEA filed the instant charge which alleged that the Conejo Valley Unified School District (District) had committed an unfair practice in violation of subsections 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA).[1] The factual allegations supporting the charge were that the District had implemented a reduction in the hours of instructional aides and a layoff of a senior clerk typist without first giving CSEA an opportunity to negotiate either the reduction in hours or the effects of the decision to lay off.

On February 28, 1983, the District submitted a response to the charge. It urged that the matter be deferred to the grievance procedure of the parties' contract, which culminates in binding arbitration, on the grounds that the issues raised by the charge were covered by the contract.

The contract upon which the regional attorney based his determination included the following pertinent provisions:

ARTICLE 17
LAYOFF AND REEMPLOYMENT

> 17.1 To the extent found to be within the scope of negotiation by final court judgment, the following shall apply:

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

Section 17.1.1

Reason for Layoff: Layoff shall occur only to the extent authorized by law.

. . . . . .

Section 17.1.3

Reduction in Hours: To the extent required by law, permanent reduction in regularly assigned time shall be considered a layoff under the provisions of this Article.

. . . . . .

Section 17.1.13

During the term hereof, the District shall implement any layoffs consistent with the provision of this Article.

In addition, contract subsections 17.1.2 and 17.1.4-.[13] set forth detailed provisions on layoff procedures, including notice, order of layoff, bumping rights, reemployment rights and voluntary demotion or reduction in hours in lieu of layoff.

The grievance provision of the contract sets forth a four-step procedure, the last step of which provides for binding arbitration, as follows:

ARTICLE 20
GRIEVANCES

. . . . . .

20.7 Level Four

20.7.1 If the Union believes that there has been error on the part of the Superintendent or his/her designee, it may, by written notice to the Superintendent within fifteen (15) calendar days, refer the grievance to

> arbitration. If any question arises as to the Arbitrability of the grievance, such questions will, prior to the consideration of the issue, be ruled upon by the same arbitrator after such hearing and evidence as may in his/her judgment be required . . . . The decision of the arbitrator will be . . . final and binding upon the parties to this Agreement.

DISCUSSION

Subsection 3541.5(a)(2) of the EERA provides that the Board shall not:

> . . . issue a complaint against conduct also prohibited by the provisions of the agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted, either by settlement or binding arbitration.

In the instant case, the regional attorney relied on the Board's decision in Dry Creek Joint Elementary School District (7/21/80) PERB Order No. Ad-81a, in which the Board concluded that subsection 3541.5(a)(2) essentially codifies the doctrine of deferral which was developed by the National Labor Relations Board (NLRB) in Collyer Insulated Wire (1971) 192 NLRB 837 [77 LRRM 1931]. In that case, the NLRB stated that it would defer to arbitration the resolution of refusal-to-bargain charges where: (1) the dispute arises within a stable collective bargaining relationship and there is no enmity by the respondent toward the charging party; (2) the respondent is ready and willing to proceed to arbitration and to waive contract-based procedural defenses; and (3) the contract and

its meaning lie at the center of the dispute. Finding that each of these conditions was met in the instant case, the regional attorney dismissed the charge.

On appeal, CSEA does not dispute the applicability of Collyer, supra, as appropriate guidance in the interpretation of subsection 3541.5(a)(2), nor does it contest the regional attorney's finding that the first two conditions set forth in that case are met in the instant case. Rather, its objection goes to the regional attorney's finding that the contract and its meaning lie at the center of the dispute.

In Collyer, the NLRB offered language to explain the stated condition that the contract and its meaning must lie at the center of the dispute. It stated that a charge of unlawful unilateral change is appropriately deferred to arbitration where:

> the unilateral action taken . . . is not patently erroneous but rather is based on a substantial claim of contractual privilege, and it appears that the arbitral interpretation of the contract will resolve both the unfair labor practice issue and the contract interpretation issue in a manner compatible with the purposes of the Act, . . . (Emphasis added.)

In Roy Robinson Chevrolet (1977) 228 NLRB 828 [94 LRRM 1474], the NLRB again considered the matter of deferral to arbitration. In that case, the employer auto dealer closed its body shop and discharged its employees without first bargaining with the employees' union. When the union filed a failure-to-

bargain charge with the NLRB, the respondent employer argued that the parties' contract authorized it to so act, and that, if the union disagreed with that reading of the contract, the dispute should be submitted to the binding arbitration procedure provided by their contract. The employer's contract defense was based on a provision stating that the "employer shall have the exclusive right to hire, suspend and discharge his employees."

The NLRB found that a legitimate issue of contract interpretation was presented as to whether the contract gave the employer the right to unilaterally terminate his employees for the reason here given. Resolution of this contract issue, the board said, will also resolve the refusal-to-bargain charge.

The NLRB was not persuaded to assert jurisdiction by the argument that the employer's interpretation of the contract language seemed improbable.

> As to the dissenters' argument that there is no contract provision which could even arguably give color to Respondent's conduct, we disagree. The Supreme Court said in United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 582-583, 46 LRRM 2416, that an order to arbitrate a particular grievance should not be denied "unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." We believe that the dispute here falls within that standard and is therefore properly referable to the parties' arbitration procedure. (Emphasis added.)

In the instant case, the District maintains that Article 17 of the contract expresses the parties' contractual intent that the District would be free, without need of further negotiation, to lawfully lay off or reduce the hours of its classified employees. In particular, the District points to decisions of this Board which establish the District's unilateral authority over the decision to lay off for lack of work or lack of funds. It then points to the extensive provisions on layoff procedures at contract subsections 17.1.2 and 17.1.4-.13 in support of its claim that it has previously fulfilled its duty to negotiate the effects of a decision to lay off. Finally, it points to contract subsection 17.1.3, which provides that: "To the extent required by law, permanent reductions in regularly assigned time shall be considered a layoff under the provisions of this Article." This provision, maintains the District, plainly sets forth the parties' agreement that reductions in hours would be handled the same as layoffs, that is, without District obligation to further negotiate either the decision or the effects.

The facts in this case are significantly similar to those considered by the NLRB in Roy Robinson Chevrolet, supra. In common are contractual provisions authorizing the employer to lay off or discharge employees. In neither case, however, does the contract expressly state that the employer would be free to so lay off without any further duty of prior negotiation.

Nevertheless, on these facts the NLRB found that the question of the parties' contractual intent was properly reserved to an arbitrator in light of their agreement to a binding arbitration procedure. In the language of Collyer, supra, the employer's contention that the union by contract waived any right to bargain further on these matters was "based on a substantial claim of contractual privilege" and was not "patently erroneous."

In the instant case, the District's claim appears even stronger than that of the employer in Roy Robinson. While in that case the contract contained no direct reference to any layoff effects, the instant contract makes extensive provision for rights and procedures to be observed by the District in implementing a layoff.[2] Thus, the employer here has express

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[2]In this regard, we reject CSEA's claim on exceptions that layoff procedures are something separate and distinct from layoff effects. PERB has developed the notion of a broad negotiable area we have generally referred to as "implementation and effects of layoff" or, more briefly, "layoff effects." By these terms we have meant to signify a grouping of all subjects within the scope of representation which may appropriately be negotiated in connection with a managerial decision to lay off. Layoff procedures (or "implementation" issues) have been treated as being within the broad area of "effects bargaining." See, e.g., South San Francisco Unified School District (9/2/83) PERB Decision No. 343. As we said in Mt. Diablo Unified School District (12/30/83) PERB Decision No. 373,

> We do not wish to imply that "implementation of layoff" is a separate subject of bargaining from "effects of layoff;" rather, the former is, broadly speaking, a sub-category of the latter.

contract language to support its claim that it has performed and completed its obligation to negotiate layoff effects.

We find that the charge filed by CSEA, together with the response thereto filed by the District, raises a substantial question of contract interpretation which lies at the center of the parties' dispute. The parties have previously agreed that such matters may be resolved by a process of binding arbitration; indeed, the parties have gone so far as to agree that, "If any question arises as to the arbitrability of the grievance, such questions will, prior to the consideration of the issue, be ruled upon by the same arbitrator. . . ." Under these circumstances, EERA subsection 3541.5(a)(2) prohibits this agency from issuing a complaint.

ORDER

The appeal is DENIED and the charge DISMISSED.

Members Jaeger and Morgenstern joined in this Decision.