STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS SAN BENITO CHAPTER #173,	)	
Charging Party,	)	Case No. SF-CE-776
v.	)	PERB Decision No. 406
SAN BENITO JOINT UNION HIGH SCHOOL DISTRICT,	)	September 13, 1984
Respondent.	)	

Appearances; Edward Lieberman for the California School Employees Association and its San Benito Chapter #173.

Before Hesse, Chairperson; Jaeger and Morgenstern, Members.

DECISION

MORGENSTERN, Member: This case is before the Public Employment Relations Board (PERB or Board) based on an appeal by the California School Employees Association and its San Benito Chapter #173 (CSEA) in which it contends that the Board's San Francisco regional attorney erred in dismissing its charge against the San Benito Joint Union High School District (District). CSEA charged that the District violated subsections 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA or Act)[1] in the course of

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

reopener negotiations by linking its higher salary offers to a provision which, in CSEA's view, contravened EERA's prohibition against contracts of more than three years in duration. For the reasons discussed below, we affirm the regional attorney's dismissal of the charge.

FACTUAL SUMMARY

On May 2, 1983, CSEA filed the instant unfair practice charge. According to the undisputed facts, at the time of filing, the parties were engaged in reopener negotiations as permitted by the terms of the parties' agreement, effective September 1, 1981 until August 31, 1984. On September 1, 1982, CSEA had submitted its reopener proposals which focused on employees' vacations, job duty specifications and wages.

In its counterproposal #4, dated February 8, 1983, the District responded with counterproposals regarding contract reopeners, contract duration, vacation and wages. The District's wage offer was a one-time bonus payment of 4 percent contingent upon CSEA's acceptance of the District's proposal which sought to extend the duration of the contract for an additional year. Without the one-year extension, the District offered a 3 percent salary increase. In subsequent counterproposals, the District continued to link its higher salary proposal to CSEA's acceptance of the extended contract duration.[2]

[2]Attached to CSEA's unfair practice charge is District counterproposal #5, dated March 9, 1983, which linked a 4.5 percent salary increase to a one-year extension or 3.5 percent

Based on these facts, CSEA charged that the District acted unlawfully by attaching its highest wage offers to an illegal condition, i.e., that the contract be extended for a fourth year. It contends that the District's contract duration proposal contravenes EERA's prohibition against contracts in excess of three years in duration.[3]

In dismissing this charge, the regional attorney determined that unlawful conditional bargaining occurs when a party insists to the point of impasse that it will not bargain further until the other party either negotiates or agrees to a

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without the extension; District proposal #6, dated March 24, 1983, which proposed a 5 percent salary increase with a one-year extension, a 4 percent increase with no extension, or one additional vacation day, no salary increase and no extension; District counterproposal #8, dated April 25, 1983, which offered either a 5 percent salary increase with a one-year extension, a 4 percent salary increase with no extension, or a 3 percent salary increase with one additional vacation day and no extension.

[3]EERA subsection 3540.1(h) provides:

> "Meeting and negotiating" means meeting, conferring, negotiating, and discussing by the exclusive representative and the public school employer in a good faith effort to reach agreement on matters within the scope of representation and the execution, if requested by either party, of a written document incorporating any agreements reached, which document shall, when accepted by the exclusive representative and the public school employer, become binding upon both parties and, notwithstanding Section 3543.7, shall not be subject to subdivision 2 of Section 1667 of the Civil Code. The agreement may be for a period of not to exceed three years. (Emphasis supplied.)

non-mandatory or unlawful item. Merely proposing a non-mandatory or unlawful item is to be distinguished from insisting to the point of impasse that it be negotiated or agreed to. On the facts of the instant case, he found no prima facie violation of conditional bargaining since he determined that the District was merely proposing the contract duration extension for negotiations.

On appeal, the thrust of CSEA's argument is that the regional attorney's decision improperly attached some significance to the fact that the District's counterproposals included offers of lesser wage increases not tied to the illegal duration proposal. CSEA contends that, in spite of the other wage offers not connected to the contract extension, the wage offer coupled with the illegal extension demand in itself evidenced bad faith bargaining.

DISCUSSION

The gravaman of CSEA's claim rests on its contention that the District's contract duration proposal was illegal. Resolution of the parties' dispute thus rests on our interpretation and application of subsection 3540.1(h).

Contrary to CSEA's assertion, none of the District's proposals sought approval of an agreement that would have exceeded the three-year limitation. The District's first counterproposal, tendered February 8, 1983, would have amended the contract duration article (9/1/81 - 8/31/84) and would have made the agreement effective " . . . from the first day of

September 1982 up to and including the last day of August 1985." While the effect of such an amendment would have been to extend the contract expiration date from August 1984 until August 1985, the District's proposal would also have altered the beginning effective date. Thus, the end result would still have been a contract of only three years' duration.

The language of EERA is clear. A contract's duration cannot exceed three years. The District proposals, with equal clarity, seek an agreement with a duration that falls within the specific mandate of the code. That is, under the District's proposals, there would never be an agreement in effect which would exceed the three-year legal maximum. Therefore, it is incorrect to say that the District sought CSEA approval of an illegal agreement.

Because we find that the contract duration counterproposal did not conflict with the letter of the law, the only remaining concern is whether the District's proposal was rendered illegal because it circumvented the purpose of subsection 3540.1(h). It is readily apparent that a purpose of subsection (h) is to insure that the parties not be permitted to enlarge the contract bar period and, thus, foreclose or forestall the possibility of decertification elections. In Hayward Unified School District (6/10/80) PERB Order No. Ad-96, for example, this Board found that an agreement between the parties to prematurely extend a contract did not bar a decertification election. See also Butte County Superintendent of Schools

(8/22/83) PERB Decision No. 338; San Ramon Valley Unified School District (10/4/79) PERB Order No. Ad-75.

While the EERA provision specifically prohibiting parties[1] agreements from exceeding three years in duration does not appear in the National Labor Relations Act (NLRA), federal precedent has established a similar three-year limitation. See Morris, Developing Labor Law, p. 363. Thus, under the NLRA, to effect that purpose, a five-year agreement operates to bar rival petitions for a three-year period only. Deluxe Metal Furniture Company (1958) 121 NLRB 995 [42 LRRM 1470]. However, as stated in New England Telephone & Telegraph Co. (1969) 179 NLRB 531 [72 LRRM 1389]:

> . . . the Board's rule is not an absolute ban on premature extensions, but only subjects such extensions to the condition that if a petition is filed during the open period calculated from the expiration date of the old contract, the premature extension will not be a bar. (Emphasis omitted.)

Thus, while we take note of the fact that EERA's duration limit is statutorily imposed and the federal rule is one of NLRA case precedent, both rules reflect the same contract bar concern. With that concern in mind, we find that the District's proposal does not conflict with the statutory purpose of subsection (h) because there is no allegation that the extension was sought for the purpose of barring a decertification election, nor would it have such a result.

As the District's proposal, if agreed upon, would have neither resulted in a contract of more than three years'

duration nor circumvented the contract bar rules, we conclude that the District's proposal to amend the beginning and ending dates of the contract duration provision did not violate either the letter or the spirit of subsection (h). Therefore, since the proposal was not illegal, it is unnecessary to decide whether or not the regional attorney correctly concluded that it is permissible to "merely propose" an illegal subject.

The other basis for CSEA's appeal is its assertion that the District violated the Act by presenting the contract duration proposals because, under the terms of the parties' agreement, contract duration was not specified as a subject which could be raised during reopener discussions. On its face, however, the contract at issue here gave each party the right to select three articles to be reopened for negotiation. Since the contract specifically precluded reopening only as to health and welfare benefits, concerted activities and lockouts, CSEA's claim lacks sufficient evidentiary support to sustain a prima facie bad faith bargaining violation.

ORDER

Based upon the foregoing facts and conclusions of law, the Board AFFIRMS the regional attorney's determination and accordingly DISMISSES the instant unfair practice charge as set forth in Case No. SF-CE-776 without leave to amend.

Chairperson Hesse and Member Jaeger joined in this Decision.