

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



LOS ANGELES CITY AND COUNTY SCHOOL )  
EMPLOYEES UNION, LOCAL 99, SEIU, )  
AFL-CIO, )  
 )  
Charging Party, ) Case No. LA-CE-1735  
 )  
v. ) PERB Decision No. 407  
 )  
LOS ANGELES UNIFIED SCHOOL DISTRICT, ) September 14, 1984  
 )  
Respondent. )  
\_\_\_\_\_ )

Appearances; Jeffrey Paule, Attorney (Geffner & Satzman) for Los Angeles City and County School Employees Union, Local 99, SEIU, AFL-CIO.

Before Jaeger, Morgenstern and Burt, Members.

DECISION

MORGENSTERN, Member: This case is before the Public Employment Relations Board (PERB or Board) on the basis of an appeal filed by the Los Angeles City and County School Employees Union, Local 99, SEIU, AFL-CIO (Union), of the dismissal of its unfair practice charge against the Los Angeles Unified School District (District). For the reasons set forth below, the Board reverses the board agent's dismissal and orders that the case be remanded and set for hearing.

FACTUAL SUMMARY

The Union contends that in 1982, the District unilaterally implemented an overtime distribution policy whereby the employer "charged" part-time bus drivers one hour of overtime

for each day of absence and full-time bus drivers two hours of overtime for each day of absence. According to the allegations, "charging of overtime hours" means that an employee is considered to have worked those hours for purposes of scheduling overtime when, in fact, no overtime hours have actually been worked. As claimed in its charge dated February 17, 1983, the effect of the unilaterally changed policy was "to deprive employees who have been absent from work an opportunity to work overtime hours."

The parties' negotiated agreement contains a management rights clause as follows:

Article III District Rights

2.0 Such retained rights include, but are not limited to the right to determine the following matters:

- j. The dates, times, and hours of operation of District facilities, functions, and activities; work schedules; school calendar; the assignment of paid duty days beyond the regular assigned duty year; the assignment of overtime, subject only to Article IX (Hours and Overtime) and Article XVI (Holidays);

3.0 The right to "determine" as used above in Section 2.0 includes the exclusive right to establish, change, modify, or discontinue in whole or in part, temporarily or permanently, any of the above matters.

In addition, Article IX specifically addresses the topic of Hours and Overtime. It provides, in pertinent part:

2.0 Overtime: To the extent practicable, the District shall use reasonable

efforts to distribute overtime work equitably among the qualified employees of an office, operational unit, or work group with consideration given to District need and employee availability in making the distribution. Upon reasonable notice of not less than twelve (12) hours except in cases of emergency, an employee shall be required to work overtime as needed. If an employee is not available for an overtime assignment, it shall be without prejudice to consideration of that employee for subsequent overtime assignments. A record of overtime hours worked by each employee in an office, operational unit, or work group shall be kept for each work year and shall be made readily available to employees and/or the Union.

#### DISCUSSION

The question presented by the instant appeal is whether the contentions raised in the Union's charge support a prima facie showing that the District violated subsections 3543.5(a), (b) or (c) of the Educational Employment Relations Act (EERA).<sup>11</sup>

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<sup>11</sup>The EERA is codified at Government Code section 3540 et seq. All references herein are to the Government Code unless otherwise indicated.

Section 3543.5 provides, in pertinent part:

It shall be unlawful for a public school employer to:

(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

Contrary to the PERB agent's determination, we are unable to conclude that the parties' contract either expressly or impliedly authorizes the District's unilateral adoption of the overtime distribution policy noted above. In our view, assuming all factual assertions to be true (San Juan Unified School District (3/10/77) EERB Decision No. 12),<sup>2</sup> the PERB agent's dismissal letter goes beyond the prima facie case determination and, indeed, seems to dismiss on the basis of his resolution of the charge.

To allege an impermissible unilateral change, a charging party is required to allege that the employer, without affording the exclusive representative adequate notice and an opportunity to negotiate, changed a matter within the scope of representation so as to alter the past practice. Grant Joint Union High School District (2/26/82) PERB Decision No. 196. In this case, the issue before us is whether it can be concluded that, as a matter of law, the charge fails to allege sufficient facts to demonstrate that the new overtime distribution policy changed the status quo.

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guaranteed to them by this chapter.

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

<sup>2</sup>Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board (EERB).

To the extent that the parties' negotiated agreement specifically addresses the subject of overtime, the alleged change should first be measured against that provision. As noted, supra, that provision permits the District to "use reasonable efforts to distribute overtime work equitably among the qualified employees . . . ." Unlike the PERB agent, we are unable to conclude that this provision permits or prohibits the policy for which the District opted, or that the Union waived its right to negotiate over the distribution of overtime.

While there are instances where a contract provision is so clear and unambiguous that it is unnecessary to go beyond that language to ascertain its meaning and thus to dismiss the charge as a matter of law (Marysville Joint Unified School District (5/27/83) PERB Decision No. 314), this is not such a case. The contract provision is replete with ambiguous phrases such as "to the extent practicable," "reasonable efforts," "distribute equitably," "with consideration given to District need." The PERB agent's determination that the overtime policy is expressly permitted by the contract skips over the ambiguities raised by Article IX, section 2.0. Moreover, he completely forecloses the possibility that the parties' bargaining history or past practice might shed some light on the meaning of the language. See, for example, Victor Valley Joint Union High School District (12/31/81) PERB Decision No. 192 where the Board reversed a dismissal citing the charging party's relevant offer of proof as to the method of

computing wages where the contract was silent; Colusa Unified School District (3/21/83) PERB Decision No. 296 where the Board upheld the administrative law judge's interpretation of the contract based on a review of numerous contract terms and bargaining history; and Anaheim City School District (12/14/83) PERB Decision No. 364 where the Board specifically noted the appropriateness of reviewing past practice to ascertain the existing policy where the contractual language is ambiguous. PERB precedent clearly reveals that an evidentiary proceeding is the appropriate vehicle by which to assess and weigh varying opinions of contract interpretation. Here, however, the PERB agent shortcuts that process and interprets the contract for himself without benefit of a fully evidentiary exploration.

ORDER

Based on the foregoing, the PERB agent's dismissal of this charge is reversed and the case is REMANDED to the general counsel for proceedings consistent with this Decision.

Members Jaeger and Burt joined in this Decision.