

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LOS ANGELES UNIFIED SCHOOL DISTRICT)
PEACE OFFICERS ASSOCIATION.)
Charging Party.) Case No. LA-CE-1778
v.) PERB Decision No. 440
LOS ANGELES UNIFIED SCHOOL DISTRICT.) November 28, 1984
Respondent.)

Appearances: William L. Williams, Jr., Attorney for Los Angeles Unified School District Peace Officers Association; O'Melveny & Myers by Diane L. Whiting for Los Angeles Unified School District.

Before Tovar, Jaeger, and Morgenstern. Members.

DECISION

TOVAR, Member: The Los Angeles Unified School District Peace Officers Association (LAUSDPOA or Association) appeals the determination of a regional attorney of the Public Employment Relations Board that a complaint should not issue on its charge that the Los Angeles Unified School District (District) committed an unfair practice in violation of the Educational Employment Relations Act (EERA or Act). For the reasons set forth below, the Board affirms the regional attorney's determination.

FACTS

The charge filed by the Association sets forth the factual allegations which follow. LAUSDPOA became the exclusive

bargaining representative for security agents of the District on November 2, 1982. after an election in which the previous exclusive representative was decertified. Prior to that date, the security officers had been represented by the California School Employees Association (CSEA).

CSEA and the District were parties to a collective bargaining agreement (CBA) which included a provision for binding arbitration of grievances.¹ The CBA also contained

¹Article V, section 1.0 provides as follows:

1.0 Grievance Defined: A grievance is defined as a claim by an employee covered by this Agreement that the District has violated an express term of this Agreement and that by reason of such violation the employee's rights under this Agreement have been adversely affected.

Article V, section 15.0 states in pertinent part as follows:

15.0 Effect of Arbitration Award: The arbitrator's decision shall be final and binding upon the grievant(s). the District and CSEA. . . .

Section 14.0 provides as follows:

Restrictions upon the Arbitrator. The arbitrator shall have no power to alter, add to, or subtract from the terms of this Agreement, but shall only determine whether an express term of the Agreement has been violated as alleged in the grievance. Past practice of the parties in interpreting and applying the terms of this Agreement may be relevant evidence, but shall not be used so as to justify or result in what is in effect a modification (whether by revision, addition, or detraction) of the terms of

provisions detailing the procedures regarding disciplinary action and involuntary transfers.² The CBA expired on September 1, 1982.

this Agreement. The arbitrator shall have no power to render an award on any grievance occurring before or after the term of this Agreement or to grant a remedy exceeding that sought by the grievant. Grievances arising prior to this Agreement are to be handled pursuant to applicable Board Rules which were in effect prior to this Agreement.

²Article XI. sections 2.1. 2.2. 2.3 and 2.4 state:

2.1 An involuntary transfer of an employee is one instituted by the District.

Involuntary transfers may occur at any time at the discretion of the District only after the approval by the Chief Security Agent or his designee.

2.2 Any employee who is involuntarily transferred shall be entitled to a statement of the reason(s) for the transfer upon request to the Chief Security Agent made within five days of the effective date of the transfer.

2.3 No employee shall be involuntarily transferred based upon a recommendation of an appropriate site administrator unless the following procedures are followed: The reason(s) for the appropriate site administrator's recommendation must be presented in writing to the employee's immediate supervisor who shall present a copy of the written reason(s) to the involved employee. If the employee is not satisfied with the reason(s) set forth, the employee may request a consultation with the appropriate site administrator and the employee's immediate supervisor, or in appropriate cases the Assistant Chief Security Agent, during which consultation the reason(s) for the recommended transfer

On September 2. 1982. three security agents were involuntarily transferred. The statement of complaint of one of the security agents asserts he was involuntarily transferred from his off-hours assignment to a day school assignment.

In September 1982, the three security agents filed grievances regarding the involuntary transfers under provisions of the collective bargaining agreement, including Article XI. section 2.3 which required that an involuntarily transferred employee receive a statement with the reasons for the transfer and provided that the employee had a further right of appeal to a higher level of management.

On January 28. 1983. a LAUSDPOA representative made a written request to the District to submit the three grievances to binding arbitration according to the terms of the expired CBA.

On February 18, 1983. the District in writing refused to arbitrate the grievances. The District maintained that the alleged contract violations took place after the expiration of the agreement which was entered into with CSEA, not LAUSDPOA.

The District indicated that it would be willing to process any post-contract grievances through the steps of the defunct

shall be explained to the employee and the employee's views on the matter considered.

2.4 The decision of the Director of Administrative Services or his/her designee shall be final in all involuntary transfers.

grievance procedure up to but not including arbitration, and that the parties could mutually agree to arbitrate certain cases on an ad hoc basis. Regarding the instant grievances, the District refused to proceed to arbitration because it believed that the grievances were without merit.

LAUSDPOA filed the instant charge on April 28. 1983.

DISCUSSION

The issue raised by the instant appeal is whether the factual allegations raised by the Association's charge support a prima facie determination that the District violated sections 3543.5(a). (b) or (c) of the EERA³ by refusing to take certain grievances to arbitration after expiration of the CBA.

³EERA 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 guaranteed to them by this chapter.
- (c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

decertification of the union which negotiated the CBA, and certification of a new exclusive representative.⁴

Section 3543.5 (c) of the Educational Employment Relations Act provides that it is an unfair practice for an employer to refuse or fail to meet and negotiate in good faith about a matter within the scope of representation. Generally, the employer violates its duty to negotiate in good faith where it unilaterally alters an established policy concerning a matter within the scope of representation without first affording the exclusive representative of its employees notice and the opportunity to meet and negotiate in good faith over the proposed action. Grant Joint Union High School District (2/26/82) PERB Decision No. 196; Anaheim City School District (12/14/83) PERB Decision No. 364.

Section 3543.2 expressly includes within the scope of representation procedures for the processing of grievances established pursuant to sections 3548.5. 3548.6. 3548.7 and 3548.8 of the Act. including provisions for binding arbitration of grievances. (See. Healdsburg Union High School District, et al (1/5/84) PERB Decision No. 375.)

⁴In considering an appeal of dismissal of an unfair practice charge, all facts alleged in the charge must be deemed true. San Juan Unified School District (3/10/77) EERB Decision No. 12. Prior to January 1. 1978. PERB was known as the Educational Employment Relations Board.

An employer is precluded from making unilateral changes in the status quo both during the term of a negotiated agreement and after that agreement expires until such time as the parties negotiate a successor agreement or they negotiate through completion of the statutory impasse procedure. Pittsburg Unified School District (6/10/83) PERB Decision No. 318; Modesto City Schools (9/27/83) PERB Decision No. 347.

In Anaheim City School District, supra. PERB Decision No. 364. the Board found an unlawful unilateral change where the employer unilaterally changed the grievance procedure by refusing to arbitrate grievances after expiration of the contract. The Board adopted the U.S. Supreme Court's view in Nolde Brothers, Inc. v. Local 357, Bakery and Confectionary Workers (1977) 430 U.S. 243. 252. [94 LRRM 2753] that the duty to arbitrate grievances survives contract expiration unless the contract indicates expressly or by clear implication an intention that the duty to arbitrate will terminate upon expiration of the contract.

Article V. section 14.0 of the CBA expressly provides that:

The arbitrator shall have no power to render an award on any grievance occurring before or after the term of this agreement.

Thus, unlike the contracts at issue in Nolde, supra, and Anaheim, supra, this CBA clearly indicates a mutual intention by the parties that the duty to arbitrate will terminate upon expiration of the contract.

The charge admits that the transfer of the security agents occurred after the contract expired. Charging party nevertheless argues that the "reasons" for the District's action existed while the contract was still in effect, and that Article V does not therefore bar arbitration.

This argument is rejected. An employee has no basis for filing a grievance until and unless the employer has taken some disputed action. It is the employer's action, not its pre-existing, unexpressed motivation, which triggers the grievance machinery.

Because the grievances here arose after the negotiated agreement expired, the specific language of the arbitration provision, which is incorporated in the charge, requires dismissal of the charge on the ground that it fails to state facts demonstrating that the District violated the Act by refusing to submit the grievances to arbitration.⁵

ORDER

Based on the foregoing. Charge No. LA-CE-1778 is DISMISSED.

Members Jaeger and Morgenstern joined in this Decision.

⁵The Board thus need not consider in this case what effect, if any, the change of exclusive representative would have on the duty to arbitrate where an arbitration provision survives expiration.