

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



DIANE BENNETT ET AL.,)	
Charging Parties,)	Case Nos. SF-CE-897
v.)	through
)	SF-CE-913
SAN FRANCISCO UNIFIED SCHOOL)	
DISTRICT,)	
Respondent.)	PERB Decision No. 501
<hr/>		April 17, 1985
DIANE BENNETT ET AL.,)	
Charging Parties,)	Case Nos. SF-CO-234
v.)	through
)	SF-CO-250
SAN FRANCISCO CLASSROOM TEACHERS)	
ASSOCIATION, CTA/NEA,)	
Respondent.)	
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Appearances; Van Bourg, Allen, Weinberg & Roger by Stewart Weinberg for Diane Bennett et al.; Kirsten L. Zerger, Attorney for San Francisco Classroom Teachers Association, CTA/NEA.

Before Jaeger, Morgenstern and Burt, Members.

DECISION

MORGENSTERN, Member: The above-captioned cases have been consolidated and come before the Public Employment Relations Board (PERB or Board) based on appeals of dismissals of unfair practice charges. Both sets of charges were filed on April 17, 1984. Diane Bennett and 16 other individual certificated employees (Charging Parties) filed the instant charges against the San Francisco Unified School District (District) and

against the San Francisco Classroom Teachers Association, CTA/NEA (CTA), claiming that the salary schedule agreed to by the District and CTA had the effect of depriving the Charging Parties of full credit for years of service. The charges allege that the agreement conflicts with the provisions of Education Code section 45028.¹ In the charges filed against CTA, the Charging Parties also allege that, by this conduct, they were deprived of their right to fair representation. For the reasons outlined below, we affirm the dismissal of the charges.

FACTUAL SUMMARY

In September 1983, the District and CTA negotiated an agreement which established a salary schedule placing individual teachers on the schedule based on years of experience and academic attainment. Vertical steps within the schedule correspond to years of experience. Horizontal classes reflect academic attainment. As each additional year of experience is acquired, a one-step advancement in salary is

¹Section 45028 provides, in pertinent part:

Effective July 1, 1970, each person employed by a district in a position requiring certification qualifications except a person employed in a position requiring administrative or supervisory credentials, shall be classified on the salary schedule on the basis of uniform allowance for years of training and years of experience. Employees shall not be placed in different classifications on the schedule, nor paid different salaries, solely on the basis of the respective grade levels in which such employees serve.

made within each class up to the maximum for that class. The maximum number of years of experience varies between classes. When a teacher has advanced to the highest step, additional years of experience are not credited. The contract provision in dispute here, section 18.3.2, provides as follows:

In accordance with past practice, a member of the bargaining unit who has completed rating 11 or higher of column B-7 and becomes eligible for B-8 shall be entitled to placement at rating 12 of column B-8.

This provision limits a teacher who advances horizontally on the salary schedule based on academic achievements to a one-step increase for experience even though the teacher has had additional years of experience not credited in the lower class but which is credited in the new column.

After the instant charges were filed, the regional attorney advised the Charging Parties' attorney as follows:

The allegations do not specify when these individuals were classified on the B-7 or B-8 schedule, when the District and the Association allegedly agreed to an improper classification

In response, the Charging Parties indicated they were unaware of the date on which they became entitled to move from B-7 to B-8.

In a letter dated May 31, 1984, the San Francisco regional attorney advised the Charging Parties that no complaint would issue because the charges failed to allege facts sufficient to state a prima facie violation of the Educational Employment

Relations Act (EERA).² Specifically, he concluded that, because the agreement containing the alleged unlawful provision was concluded on September 3, 1983, the charges filed on April 17, 1984 were time-barred.³³

DISCUSSION

In the instant appeals of the dismissals, the Charging Parties contend that, although the agreement was reached on September 3, 1983, it was not ratified by the District governing board until November, and it was not published or distributed to the employees until December. Charging Parties assert that this lack of knowledge was not made known to the regional attorney because, in his warning letter, he requested only information about when the Charging Parties were classified on the salary schedule and when the District and CTA agreed to the improper contract provision. We find these assertions wholly unpersuasive.

²EERA is codified at Government Code section 3540 et seq.

EERA section 3541.5(a) precludes the Board from issuing a complaint if the charge is ". . . based upon an alleged unfair practice occurring more than six months prior to the filing of the charge; . . . "

³In the regional attorney's dismissal letter, he indicates that 13 of the teachers involved in the instant case have initiated grievances against the District. His investigation of these documents revealed that, as to these 13 individuals, the disputed salary placement occurred prior to the effective date of the contract. Based on this uncontested factual finding, the regional attorney found these 13 teachers to have no claim against CTA as to their salary placement. We agree.

As CTA noted in its response, the burden of alleging sufficient facts rests on the Charging Parties. PERB regulation 32615(a)⁴ requires that the charge include a clear and concise statement of the facts and conduct alleged to constitute a prima facie unfair practice. Here, the charges fail to allege that the complained-of conduct occurred within the six-month statute of limitations period. The charges give no dates indicating when the complained-of conduct occurred. In each instance, the charges merely allege that the District and CTA agreed to a contract provision whereby individual teachers are not placed at the step at which the teachers feel themselves to be entitled.

We find that Charging Parties' obligation to allege when the complained-of conduct occurred springs not from the regional attorney's warning letter but from EERA and the Board's regulations. Even if the Charging Parties were ignorant of Board rules, we find the regional attorney's warning letter to be more than adequate for the purpose of alerting the Charging Parties to their timeliness problem. He asked for specific information about when the salary classifications occurred and when the District and CTA allegedly agreed to an improper classification. We find no ambiguity in the language of his request. The charges alleged

⁴PERB regulations are codified at California Administrative Code, title 8, section 31001 et seq.

unlawful agreement on the salary schedule, and the regional attorney asked when that agreement occurred. Member Jaeger seems to suggest that the request for information was inadequate because the regional attorney did not specifically ask when Charging Parties learned of the newly-negotiated schedule. We find shifting this obligation from the Charging Parties to the Board agent to be improper. Indeed, we find it most unpersuasive for Charging Parties' representative, hardly an uninitiated novice in the labor law field, to now assert their ignorance of the material the Board agent sought. For this reason, the information appearing for the first time in the instant appeal will not be heard to cure the earlier deficiency.

ORDER

Based on the foregoing, we hereby DISMISS Case Nos. SF-CE-897 through SF-CE-913 and SF-CO-234 through SF-CO-250.

Member Burt joined in this Decision. Member Jaeger's concurrence begins on p. 7.

Jaeger, Member, concurring: On review of the procedural record in this case, I find no indication that the regional attorney alerted Charging Parties that he considered the original charge untimely. He did pose a series of factual questions to Charging Parties in his warning letter of May 3. Included among these were questions as to the date the employees were denied advancement on the salary schedule and the date the Association reached agreement with the District on terms of that schedule. However, the Association points out on appeal that the charge was in fact timely because the Charging Parties did not learn of the newly-negotiated salary schedule until December 1984, well within six months of the April 17, 1985 filing date. Thus, had Charging Parties supplied all the information requested by the regional attorney, the timeliness of this charge would still not have been established. In his dismissal letter, the regional attorney himself points out--belatedly, and thus, I feel, unfairly--that "the charge must necessarily allege . . . the date on which charging party became aware of [the contract's] contents." Because the regional attorney never requested that date, or warned that the charge as stated was deficient for timeliness reasons, I find that the regional attorney's dismissal of the charges on timeliness grounds constitutes error.

I join the majority in affirming the dismissal, however, for the alternate reasons identified by the regional attorney in his letter of May 3. There, the regional attorney clearly stated his position that on substantive grounds the facts alleged failed to state a prima facie violation of the EERA. In this regard, I find

no error in the regional attorney's position. I find further, on review of Charging Parties' amended charge, that the substantive deficiencies present in the original charge are not cured. The charge, therefore, could properly have been dismissed on this basis alone.