

STATE OF CALIFORNIA
 DECISION OF THE
 PUBLIC EMPLOYMENT RELATIONS BOARD



MODESTO TEACHERS ASSOCIATION.)	
CTA/NEA.)	
)	
Charging Party.)	Case No. S-CE-736
)	
v.)	PERB Decision No. 552
)	
MODESTO CITY SCHOOLS AND HIGH)	December 20,. 1985
SCHOOL DISTRICT.)	
)	
Respondent.)	
_____)	

Appearance: Kenneth W. Burt II for Modesto Teachers
 Association. CTA/NEA.

Before Hesse, Chairperson; Jaeger. Morgenstern and Burt, Members.

DECISION

BURT, Member: This case is before the Public Employment
 Relations Board (PERB or Board) on appeal by the Modesto
 Teachers Association. CTA/NEA (Association) of a Board agent's
 partial dismissal of its charge that the Modesto City Schools
 and High School District (District) violated the Educational
 Employment Relations Act (EERA) section 3543.5¹ by. inter

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

Section 3543.5 provides that:

It shall be unlawful for a public school
 employer to:

alia, unilaterally increasing unit members' hours and workload when it reduced the number of department chairpersons at Downey High School from 14 to 10 and by eliminating the extra preparation period for the English department chairperson at that school.²

After reviewing the entire record, we reverse the dismissal consistent with the discussion below.

(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.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

(e) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

²A complaint issued on an additional allegation of unlawful unilateral change based on the District's eliminating an extra preparation period for the Downey social sciences chairperson. See Modesto City Schools and High School District (1985) PERB Decision No. 541.

FACTUAL AND PROCEDURAL SUMMARY

In its first amended charge,³ the Association alleges that prior to September 1983, Downey High School had 14 departments, each with a chairperson. In September 1983, the District reduced the number of chairpersons at Downey to 10. This reduction was accomplished by: (1) combining boys' and girls' physical education departments; (2) eliminating the music department chairperson position; (3) combining the industrial education, agriculture, and homemaking departments and the Regional Occupational Programs (ROP) in construction and homemaking into one department; (4) expanding the special education department to include the pregnant minors' program and the infant toddlers' program; and (5) expanding the business department to include drivers' education, work experience education, career center ROP and career planning.

The Association further alleges that the duties of department chairpersons include, inter alia, planning departmental assignments, developing and implementing a budget, coordinating and assisting substitutes, and arranging and conducting departmental meetings. The Association alleges

³A second amended charge, filed May 4, 1985, was untimely filed. Thus, our determination is based solely on the allegations contained in the original charge and the first amended charge.

that, with one exception.⁴ The assigned duties of 14 chairpersons have not changed except that they must now be accomplished by 10 chairpersons.

The reduction in the number of chairpersons was alleged to violate the District's duty to bargain in that the basis of the chairpersons' negotiated compensation was changed and the hours, responsibilities and workload of the chairpersons were unilaterally increased by the District's merger of departments. The Association alleges that there was a past practice of having 14 chairpersons and that language in the parties' agreement⁵ was included to provide for extra compensation for chairpersons of separate departments, not combinations of disciplines.

⁴In the music department, the members of the department are now expected to carry out the former chairperson's duties.

⁵This contract provision provides in pertinent part:

EXTRA DUTY STIPENDS

d. Department Chairperson

	Percent	Amount
5 or less	5	\$ 645
6 to 10	6	774
11 or more	8	1.032

(part-time equivalent shall count as part-time members in a department) . . .

The Association also alleges that in the last 14 years, the chairperson of the English department received an extra preparation period to carry out the chairperson's duties. It further alleges that this extra preparation period was partial compensation for that chairperson and was unilaterally eliminated by the District in September 1983. The Association indicates that this extra preparation period appears to have been restored later in the year.

The regional attorney found that the Association had failed to state a prima facie case and thus dismissed the above charges. He stated that the Association had failed to demonstrate that the new duties assigned the chairpersons were not reasonably comprehended within the scope of the existing duties. He also indicated that the Association had failed to support its allegation that the chairpersons' hours and workload were increased with sufficiently specific evidence. Moreover, he said, if the chairpersons' hours and workload were shown to have increased, it was because there were more teachers under each chairperson's supervision and the negotiated contract adequately provided for that eventuality. Thus, no unlawful unilateral change in policy had been shown.

The regional attorney dismissed the charge based on the District's elimination of the extra preparation period for the English department chairperson because the change affected a

single individual for a limited period of time and the Association had therefore failed to show a change in policy.

On appeal, the Association argues that whether the resulting increases in chairpersons' hours and workload are matters reasonably comprehended within their existing duties depends on the intent of the parties, which is something to be determined after a hearing. Further, the Association claims that the regional attorney erred in finding that the combination of new areas into existing departments was equivalent to an increase in the number of persons in a department. The Association maintains that combining disciplines within a single department increases the hours and workload of the chairperson more than merely adding additional teachers for the chairperson to supervise. In addition, the Association again points to the music department, where the chairperson's position was eliminated, but where the same tasks are now expected to be performed by the members of the department without additional compensation.

In regard to the charge based on the District's elimination of the extra preparation period for the English department chairperson, the Association states that the only difference between this charge and the charge on which a complaint issued is the amount of time involved. The Association argues that whether or not that amount of time is de minimus should be left to an administrative law judge to decide after a hearing.

DISCUSSION

The only issue here is whether sufficient facts⁶ were alleged to state a prima facie case of unlawful unilateral change. To state such a prima facie case, the Association must allege facts indicating that action was taken which changed the status quo regarding a matter within the scope of representation without giving the exclusive representative notice and opportunity to bargain, or, if negotiations have occurred, that the matter was not negotiated to agreement or through impasse prior to implementation of the change.

San Francisco Community College District (1979) PERB Decision No. 105. We have also indicated that to be unlawful, the change must amount to a change in policy having either a generalized effect or a continuing impact on the matter within scope of representation. Grant Joint Union High School District (1982) PERB Decision No. 196.

In the instant case, we read the Association's charge to contain an allegation that, by reducing the number of chairpersons, the District unlawfully changed the wages and hours of the 10 remaining chairpersons. While not well

⁶In reviewing dismissal of a charge for failure to state a prima facie case, the allegations in the charge are presumed to be true. San Juan Unified School District (1977) EERB Decision No. 12. (Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board.)

detailed, we find the allegations are sufficient to state a prima facie case and, therefore, direct that a complaint issue as to this charge. Contrary to the regional attorney's, determination, we find that whether or not the parties intended the extra stipend provision of the contract to apply to situations involving a merger of different disciplines within a single department is a question to be determined after a hearing.

We also hold that the allegation concerning the elimination of the English department chairperson's extra preparation period states a prima facie case and we reverse the regional attorney's determination on that matter. The fact that this action of the District affected only one person for a limited period of time does not preclude it from being a change in policy, especially as it is clear from the complaint that issued that it was not an isolated case. In fact, it appears to us that the District's elimination of both extra preparation periods was part and parcel of a general reorganization of the department chairpersons and thus had a generalized effect.

However, we take administrative notice of the factual finding of the administrative law judge (ALJ) who heard that portion of the instant charge that proceeded to a hearing. He found there to be no uniform district-wide policy for determining which, if any, department chairpersons would receive a second preparation period. Since we have affirmed

the ALJ's proposed decision in Modesto City Schools and High School District, supra, an evidentiary hearing may not be necessary here to consider the past practice as to the English department chairperson.

ORDER

On the basis of the foregoing Decision and the record as a whole, it is hereby ORDERED that the regional attorney's partial dismissal of the charges in Case No. S-CE-736 is REVERSED and the charges discussed here are REMANDED to the general counsel for issuance of a complaint and appropriate further proceedings.

Members Jaeger and Morgenstern joined in this Decision.

Chairperson Hesse's concurrence and dissent begins on page 10.

Hesse, Chairperson, concurring and dissenting: I dissent from the reversal of the dismissal. As the majority notes, the Association filed a second amended charge, one that was not timely filed. Yet, much of the basis for the allegation that combining departments created an increase in the amount of work time for chairpersons is contained in that untimely charge. Thus, I find that, on the basis of the timely charge, the Association did not articulate a prima facie case.

Furthermore, I do not believe that the Association pled that the combining of the departments differed materially from merely increasing the size of the departments, a subject that had been negotiated.

I concur that the decision in Modesto City Schools and High School District (1985) PERB Decision No. 541, is dispositive of the question concerning the elimination of the English Department chairperson's extra preparation period.