

STATE OF CALIFORNIA
 DECISION OF THE
 PUBLIC EMPLOYMENT RELATIONS BOARD



ANTIOCH UNIFIED SCHOOL DISTRICT,)	
)	
Charging Party,)	Case No. SF-CO-203
)	
v.)	PERB Decision No. 581
)	
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION)	June 30, 1986
AND ITS ANTIOCH CHAPTER #85,)	
)	
Respondent.)	
)	

Appearance; Atkinson, Andelson, Loya, Ruud & Romo by Janae H. Novotny for Antioch Unified School District.

Before Morgenstern, Burt and Porter, Members.

DECISION

MORGENSTERN, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Antioch Unified School District (District) of a dismissal by the Board's regional attorney of its allegation that the California School Employees Association and its Antioch Chapter #85 (CSEA or Association) violated section 3543.6(c) of the Educational Employment Relations Act (EERA or Act)¹ by refusing to meet

¹EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

Section 3543.6 provides, in pertinent part:

It shall be unlawful for an employee organization to:

.

and negotiate in good faith when it announced it would not discuss either the District's or its own impact-of-layoff proposals until the District complied with the public notice provisions set forth in EERA, section 3547.

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(c) Refuse or fail to meet and negotiate in good faith with a public school employer of any of the employees of which it is the exclusive representative.

²Section 3547 provides:

(a) All initial proposals of exclusive representatives and of public school employers, which relate to matters within the scope of representation, shall be presented at a public meeting of the public school employer and thereafter shall be public records.

(b) Meeting and negotiating shall not take place on any proposal until a reasonable time has elapsed after the submission of the proposal to enable the public to become informed and the public has the opportunity to express itself regarding the proposal at a meeting of the public school employer.

(c) After the public has had the opportunity to express itself, the public school employer shall, at a meeting which is open to the public, adopt its initial proposal.

(d) New subjects of meeting and negotiating arising after the presentation of initial proposals shall be made public within 24 hours. If a vote is taken on such subject by the public school employer, the vote thereon by each member voting shall also be made public within 24 hours.

(e) The board may adopt regulations for the purpose of implementing this section, which are consistent with the intent of the section; namely that the public be informed of the issues that are being negotiated upon

SUMMARY OF FACTUAL ALLEGATIONS

According to the statement of facts submitted by the District in support of its unfair practice charge and the investigation conducted by the regional attorney, the parties commenced negotiations for a successor agreement to their contract in September 1982. Initial proposals submitted by the Association were presented to the public in accordance with the "sunshine" requirements of EERA on September 22, 1982. Thereafter, on October 27, 1982, the District's counterproposals were made public. In essence, CSEA proposed that the existing contract language regarding layoffs be retained. The District proposed that the layoff provisions be deleted from the parties' contract. In November, negotiations began. According to the District, the subject of layoffs was discussed.

In March 1983, during the course of a negotiating meeting, the District negotiator informed the Association that it expected to lay off 74 employees. The Association demanded to negotiate the impact of the layoffs on the 74 employees to be laid off and the impact on the employees who would remain employed. In response to Association requests, the District provided CSEA with a list of positions targeted for the layoff, a seniority list and a list of the specific employees to be laid off. In a letter

and have full opportunity to express their views on the issues to the public school employer, and to know of the positions of their elected representatives.

to the District superintendent dated April 13, 1983, CSEA Field Representative Michael Aidan submitted a written demand to negotiate along with specific impact-of-layoff proposals. At the next negotiating meeting, the District submitted its own proposals concerning the impact of the layoffs.

At this juncture, the Association announced that it was unwilling to negotiate the subject of the impact of the layoffs until the District sunshined both parties' proposals. The District believed that the impact-of-layoff proposals were inextricably bound to the ongoing negotiations for the successor agreement and declined to sunshine the impact proposals. At the first regularly scheduled governing board meeting following submission of the District's impact-of-layoff proposals, the District announced that it had received a proposal from CSEA concerning the impact of the layoffs and advised that the proposal was available to the public.

In the ensuing months, the issue of layoffs was raised several times. The District requested that the Association negotiate the impact of the layoffs, but CSEA maintained that the impact-of-layoff proposals required sunshining and to negotiate the unsunshined proposals would violate the Act and would preclude the parties from availing themselves of the statutory impasse procedures.

DISCUSSION

PERB Regulation 32615³ sets forth the required contents of an unfair practice charge and obligates the charging party to, inter alia, set forth in its charge "a clear and concise statement of the facts and conduct alleged to constitute an unfair practice." PERB Regulation 32630 authorizes dismissal and refusal to issue a complaint "[i]f the Board agent concludes that the charge or the evidence is insufficient to establish a prima facie case"

The question before the Board in the instant case is whether the regional attorney correctly determined that the allegations contained in the District's unfair practice charge are insufficient to state a prima facie case of unlawful refusal to bargain. In dismissing the charge, the regional attorney concluded that, inter alia, the District failed to allege a violation of the Act because it failed to allege that a duty to bargain in good faith ever arose. This conclusion is premised on his finding that the impact-of-layoff proposals were initial proposals within the definition of section 3547(c), supra, at footnote 2. This conclusion was based on the finding that the impact-of-layoff proposals initiated negotiation which occurred independently of the negotiations for a successor agreement, and that resolution of the separate issues was in no way linked and

³PERB Regulations are codified at California Administrative Code, title 8, section 31001 et seq.

followed separate timetables. Consequently, he concluded, the District's obligation to sunshine the impact-of-layoff proposals was not met by sunshining the proposals for the successor agreement six months earlier. We do not agree.

The general subject matter of the Association's impact-of-layoff proposals was encompassed by the parties' initial contract proposals; thus, no further notice to the public was necessary, as section 3547 of the Act was satisfied by the sunshining of the initial proposals. We find the Association's alleged insistence upon further sunshining, when coupled with the course of conduct outlined in the District's charge, sufficient to support a prima facie case of a refusal to bargain under a totality of the circumstances test.

Moreover, subsequent to the regional attorney's decision outlined above, a full evidentiary hearing was conducted by a PERB administrative law judge (ALJ) in conjunction with an unfair practice charge filed by the Association in which it alleged, inter alia, that the District failed to satisfy its bargaining obligation by refusing to sunshine the identical impact-of-layoff proposals at issue here. Antioch Unified School District (1985) HO-U-244. In that case, the ALJ rendered a proposed decision pertinent to the central issue here: whether the District had a duty to sunshine the impact-of-layoff proposals and whether the Association had a right to refuse to negotiate until the District had done so. With the benefit of the testimonial and evidentiary

record, the ALJ compared the parties' impact proposals to the initial contract proposals and concluded:

Although the Charging Party can point to some differences between the impact proposals and the initial contract proposals within certain items, it is clear that the subject matter was identical.

* * * * *

Requiring the District to go through a second series of public notice hearings would not have afforded the public any greater notice than it already had that the issues were being negotiated.

CSEA's characterization of different proposals on substantially the same subject as different issues does not create an obligation on the part of the District to duplicate public notice efforts or to engage in separate but simultaneous negotiations.

Neither party filed exceptions to that decision and, consequently, the Board itself has not reviewed the factual and legal conclusions reached by the ALJ below. Nonetheless, by failing to take exception to that decision, the parties have indicated their willingness to be bound by that resolution. The ALJ's proposed decision involved the same parties as in the instant dispute, involved the same critical issues of fact and law, and is now final and binding as to these parties. Accordingly, those issues may not be relitigated as this case proceeds.

ORDER

In accordance with the foregoing, the Public Employment Relations Board ORDERS that the general counsel issue a complaint

against the California School Employees Association and its Antioch Chapter #85 and that the case thereafter be referred to the chief administrative law judge for further proceedings if necessary.

Members Burt and Porter joined in this Decision.