

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



INGLEWOOD TEACHERS ASSOCIATION,)
CTA/NEA,)
)
Charging Party,) Case No. LA-CE-1938,
) LA-CE-2003
)
v.)
) PERB Decision No. 624
INGLEWOOD UNIFIED SCHOOL DISTRICT,)
)
Respondent.)
)
)
)

Appearances; Howard M. Knee, Attorney for Inglewood Unified School District; A. Eugene Huguenin, Jr., California Teachers Association, Attorney for Inglewood Teachers Association.

Before Hesse, Chairperson; Porter and Craib, Members.

DECISION

HESSE, Chairperson: The Inglewood Unified School District (District) appeals the proposed decision of a Public Employment Relations Board (PERB or Board) administrative law judge (ALJ). The ALJ found that the District violated sections 3543.5(a), (b), and (c) of the Educational Employment Relations Act (EERA)¹ when a District principal unilaterally implemented

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

Section 3543.5 provides, in pertinent part, as follows:

It shall be unlawful for a public school employer to:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to

a key check-in, check-out system at Inglewood High School, and when he threatened employees at Inglewood High School with adverse personnel action if they exercised their right to file grievances.

FACTS

Lawrence Freeman was appointed principal of Inglewood High School on January 4, 1984.² Freeman was hired by the school board to institute changes at the school by imposing student discipline and improving the education that the students received. To implement his plans, Freeman held several meetings with the school faculty. At his first few meetings. Freeman discussed the topics that became subjects of the instant unfair practice charges.

LA-CE-1938

A. Dress Code

At the first meeting of the entire faculty, Freeman made reference to the "sloppy attire" of the male faculty. Freeman stated that the male faculty would wear ties and shirts other

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.

²The ALJ incorrectly stated that Freeman became principal in 1985.

than knit shirts (i.e., dress shirts), and would no longer wear blue jeans. A short while later, Freeman called a meeting of only the male faculty. At this meeting, Freeman elaborated upon his dress requirements. He repeated that the men would wear shirts and ties, and would not wear blue jeans. He also indicated that men would not wear jogging shoes or tennis shoes and that leather-top shoes would be required. The only exception was for the physical education instructors:

Although Freeman testified that his dress code was merely a suggestion rather than a mandate, the evidence presented indicates that Freeman was implementing a mandatory dress code. Whenever Freeman saw teachers in tennis or jogging shoes, he would criticize the instructor. He also sent memos to the "offending" instructors. Thus, the ALJ concluded that Freeman implemented a rule, not a suggestion, regarding teacher dress.

B. Threats

At the first meeting Freeman called upon becoming principal at Inglewood, he made various statements concerning attitudes of the teachers and the representatives of the Inglewood Teachers Association (Association or ITA). According to Association witnesses, Freeman stated that the Association was worthless, in part because it had achieved only a two-percent raise for the faculty. Freeman denied stating that the Association was "worthless." He claimed that what he was trying to get across was the importance of using the parents to

influence the school board. Association witnesses testified that they believed that Freeman was making a comment about the Association itself, not about the relative power of parents as lobbyists to the school board.³

At this meeting of the entire faculty, Freeman made a statement that is the subject of this charge. Freeman indicated that if employees filed a grievance and lost, they would be forced or pressured into leaving Inglewood High School. At the following, all-male, faculty meeting, teacher Michael Nollan asked Freeman for clarification of his statement that teachers who file losing grievances would be pressured to leave. At this second meeting, Freeman stated that he did not mean to say he would pressure teachers to leave, but that peer pressure would make teachers who did not participate in the "Freeman plan" want to leave. Despite Freeman's subsequent clarification, Nollan testified that he still believed that if a teacher filed a grievance and lost, Freeman personally would pressure that teacher to leave the school. This subject apparently was not discussed at subsequent faculty meetings.

LA-CE-2003

A. The Key System

Prior to Freeman's becoming the principal at Inglewood High School, teachers were assigned room and gate keys for the entire

³This alleged statement is not part of the charge, but is noted simply to place in context the atmosphere in which the conduct at issue herein arose.

school year, giving them access to the campus and their classrooms. Shortly after Freeman became principal, he instituted a system whereby teachers were required to pick up their room keys at the beginning of each school day and drop them off at the close of the school day. At his first faculty meeting, Freeman explained that the new key system was necessary for security reasons. According to Freeman, one of the vice-principals had lost his set of master keys and various teachers were leaving rooms open or loaning their keys to students. Freeman stated that on weekends he could find students in the gymnasium or in various classrooms. Additionally, several typewriters and other material had been stolen from the school facilities.⁴ Freeman stated he had previously instituted a similar system at another school, which had been quite successful in improving campus security. Freeman implemented this system at Inglewood without attempting to utilize alternative methods of securing the campus.

The teachers and the Association were concerned that Freeman's key system was a subterfuge for implementing a procedure requiring teachers to sign in and out. The District had instituted a sign in, sign out procedure at another high

⁴The testimony of one teacher, Martha Morales, established that the typewriters were stolen not from the business education classrooms, but rather from the principal's office. (TR 224.) Her testimony also establishes, however, that prior to the key system implementation, and until the locks were changed, many people did have key access to any one classroom. (TR 221-224).

school in 1982, but the Association filed a grievance and the procedure was rescinded. Furthermore, during the negotiations immediately preceding the events that led to this charge, the District had proposed a contract provision requiring teachers to sign in and sign out. The proposal was steadfastly resisted by the Association, and eventually was dropped by the District at the bargaining table.

Teachers were required by the collective bargaining agreement to report for duty 30 minutes prior to the first class and to remain 10 minutes after the last class. This contract provision meant the teachers at Inglewood High School were required to report by 8:00 a.m. and to stay until 2:55 p.m. Before implementation of the key system, teachers went directly to and from their classrooms from nearby school parking spaces. The thirty minutes before classes started were used by the teachers for various duties and activities such as returning parent phone calls, picking up mail and attendance sheets from their mailboxes in the office, etc. Some of the teachers used the time between 8:00 and 8:30 a.m. as preparation time. From 2:45 p.m. to 2:55 p.m., teachers met with students, prepared for the next day, and cleaned their rooms. The teachers would then lock their rooms and go directly to their cars. When teachers took work home, this direct access to the classrooms allowed them to transport this work home more easily.

After the key system was implemented, the teachers were

required to report to the principal's office to pick up their keys by 8:00 a.m., their normal reporting time, rather than go directly to their classrooms. Classrooms were not required to be open until 8:10 a.m. Because of the large size of the campus, and the awkwardness of carrying teaching materials from their cars to the office and then to the classrooms, teachers used part of the time prior to their first class to retrieve materials from their cars after they had been issued their keys. If, instead, they wished to use the time prior to class solely for lesson planning, they would often have to arrive prior to 8:00 a.m. to get their keys in order to be in their classrooms by 8:00 a.m.

Implementation of the key system also resulted in teachers leaving for the office when the last class ended instead of staying in their classrooms for five or ten minutes.⁵ This took several minutes away from the teachers' time to clean the classrooms, and cut into the time available to help students.

In the decision below, the ALJ ruled that the dress code was not a mandatory subject of bargaining and, therefore, Freeman was free to institute a code without bargaining. That part of the unfair charge was dismissed and no exceptions were filed by the Association.

The ALJ did rule, however, that the threats made by Freeman

⁵The contract did not require teachers to be in their classrooms, but merely required that they be "on campus" until 2:55 p.m.

were in violation of section 3543.5(a), and were not "cured" by his subsequent comments to the male faculty. As to the implementation of the key system, the ALJ ruled that the system had an effect on hours worked, and its implementation was a substitute for a check-in system, a negotiable subject. Thus, implementation of the key system, which resulted in a change in hours, violated section 3543.5(c), and, derivatively, sections 3543.5(a) and (b).

The District filed exceptions to the above adverse findings.

ISSUES

On appeal, this Board is faced with three issues:

1. Was the implementation of the key system a unilateral change within the scope of bargaining that should have been negotiated?
2. If the decision was non-negotiable, were the effects of the decision negotiable?
3. Did Freeman unlawfully threaten reprisals against teachers who used the grievance procedure?

DISCUSSION

The Key System

A unilateral change will only violate section 3543.5(c) if the subject is within the scope of representation. Since a key system is not a specifically enumerated topic, whether the implementation of the key system violated section 3543.5(c) must be decided by an application of the test in Anaheim Union High School District (1981) PERB Decision No. 177. In that

case, the Board ruled that a topic is within the scope of bargaining if: (1) it is logically and reasonably related to hours, wages, or an enumerated term and condition of employment; (2) it is a subject of such concern to management and employees that conflict is likely to occur and the mediatory influence of collective bargaining is appropriate for resolution of such conflict; and (3) the employer's obligation to negotiate would not significantly abridge its freedom to exercise managerial prerogative.

Here, we find the key system, in and of itself, is not logically and reasonably related to wages, hours, or other enumerated terms and conditions of employment. An employer has the right to secure school property, especially when there is a history of theft and vandalism. The record reflects that Freeman was motivated, at least in part, by such a concern for the campus. If, however, a key system does result in a change in the teachers' hours, the change would be due to the manner in which a particular system was implemented.

Here, the ALJ noted that the key system was "indistinguishable" from a check-in, check-out system. We disagree. The principal testified that his motive was security, and it was uncontradicted that security was a problem on the campus. Moreover, even if he also was motivated by a desire to ascertain the time the teachers arrived and left, this does not make the system itself negotiable. The PERB case relied upon by the ALJ emphasizes that a check-in, check-out

system that intrudes upon duty-free time, or that lengthens the total hours worked, would be negotiable. (San Bernardino City Unified School District (1982) PERB Decision No. 255.) Here, the evidence falls short of demonstrating any impact on hours.

The testimony of the Association's witnesses support the finding that the key system had no impact on their required hours of attendance. The system itself did not require the teachers to be on campus any earlier than provided for in the contract, i.e., 8:00 a.m. The teachers merely had to be at a designated place by 8:00 a.m. (the office) rather than on campus generally, as required by the contract.⁶ Witnesses Robert Dillen, Nollan, Michael Tomac, Vernon McKnight, and Morales (all teachers) testified that even prior to the system's implementation; they arrived well before 8:00 a.m. Nor did any of them testify that they were prevented from leaving at 2:55 p.m. The major complaint of the witnesses was that some five to fifteen minutes of time prior to their first classes now was spent walking to and from the principal's office. The testimony, however, failed to demonstrate that working hours were actually increased. Absent such a showing, the District had the authority to assign any number of tasks (e.g., supervision) or no tasks during the time between 8:00 a.m.,

⁶Indeed, we note that if the key system did require the teachers to be on campus prior to 8:00 a.m. or after 2:55 p.m., the increase in hours could have properly been addressed as a grievance under the contract. The record does not reflect whether such a grievance was filed.

and the first class. Thus, Freeman's choice of a system that caused some (but by no means all) of the teachers to walk between buildings falls within management's right to direct the work of its employees. (See El Dorado Union High School District (1985 and 1986) PERB Decision Nos. 537, 537a, 537b.)

Therefore, because the key system did not require teachers to alter their hours of employment, and because the witnesses who testified could show no impact on their hours of employment, the implementation of the key system is not negotiable and we reverse the ALJ on that point.

Freeman's Threat

The ALJ found that Freeman told the teachers that if they filed a grievance and lost, the grievant would be pressured to leave Inglewood High School. She concluded that this statement contained a threat of reprisal or force, thus violating EERA section 3543.5(a). She also found that Freeman's "clarification" was not adequate as a retraction or repudiation of the unlawful statement.

We agree with the ALJ that, in the context of other comments made at the faculty meeting, Freeman's statement constituted a threat of reprisal that interfered with the rights of employees to file grievances. Freeman had made disparaging remarks about the Association. He further said that he was going to make changes and that no one was going to stop him. With this backdrop, it is difficult to see how his statement would not be considered as a threat by those in attendance.

Although we agree with the District that an "honestly given retraction can erase the effects of a prior coercive statement," we do not find such a retraction here. Freeman made his initial statement before the entire faculty. His clarification, however, even if curative in nature, was made only before the male faculty. The ALJ correctly concluded that any curative effect of the subsequent discussion fails to remove the unlawful taint. Thus, the District violated section 3543.5(a) as a result of Freeman's threat.

CONCLUSION

The District violated EERA section 3543.5(a) when the principal threatened his faculty over their protected right to file grievances.

ORDER

Upon the foregoing findings of fact and conclusions of law, and on the entire record in this case, it is hereby found that the Inglewood Unified School District violated EERA section 3543.5(a). Pursuant to EERA section 3541.5(c), it is hereby ORDERED that the District, its governing board, and its representatives shall:

A. CEASE AND DESIST FROM:

Interfering with employees at Inglewood High School by threatening them with adverse personnel action if they exercise their right to file grievances, a right protected by the EERA.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE EDUCATIONAL EMPLOYMENT RELATIONS ACT:

1. Within thirty-five (35) workdays following the date

this Decision is no longer subject to reconsideration, post at Inglewood High School copies of the Notice attached hereto as an Appendix. This Notice must be signed by an authorized agent of the District, indicating that the District will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps should be taken to insure that this Notice is not reduced in size, defaced, altered, or covered by any material.

2. Upon issuance of this Decision, written notification of the actions taken to comply with this Order shall be made to the Los Angeles Regional Director of the Public Employment Relations Board in accordance with his instructions.

Members Porter and Craib joined in this Decision.

APPENDIX



NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California

After a hearing in Unfair Practice Case Nos. LA-CE-1938 and LA-CE-2003, Inglewood Teachers Association, CTA/NEA v. Inglewood Unified School District, in which all parties had the right to participate, it has been found that the District violated Government Code section 3543.5(a) by threatening teachers with adverse personnel actions if they exercised rights guaranteed under the the Educational Employment Relations Act.

As a result of this conduct, we have been ordered to post this Notice and we will:

A. CEASE AND DESIST FROM:

Interfering with employees at Inglewood High School by threatening them with adverse personnel actions if they exercise their right to file grievances, a right protected by the EERA.

Dated: _____ INGLEWOOD UNIFIED SCHOOL DISTRICT

By: _____
Authorized Representative

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED BY ANY MATERIAL.