STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS LODI CHAPTER #77,	)	
Charging Party,	)	Case No. S-CE-1373
v.	)	PERB Decision No. 883
LODI UNIFIED SCHOOL DISTRICT,	)	May 30, 1991
Respondent.	)	

Appearances: California School Employees Association by Burton E. Gray, Field Representative, for California School Employees Association and its Lodi Chapter #77; Pinnell, Kingsley & Larsen by Cynthia Convey, Attorney, for Lodi Unified School District.

Before Hesse, Chairperson; Camilli and Carlyle, Members.

DECISION AND ORDER

CAMILLI, Member: This case is before the Public Employment Relations Board (Board) on appeal by the California School Employees Association and its Lodi Chapter #77 (CSEA) to a Board agent's partial dismissal (attached hereto) of its charge that the Lodi Unified School District (District) violated section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA).[1] Specifically, CSEA alleges that the District

[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3543.5 states, in pertinent part:

> It shall be unlawful for a public school employer to do any of the following:
>
> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to

unilaterally implemented a change in policy when it reduced the work hours of transportation bus drivers without giving a 30-day notice, and when it failed to restore hours to bus drivers working less than full time on a seniority basis. The Board agent dismissed the allegation that the employer violated EERA section 3543.5(c) by failing to give employees 30 days notice of the reduction in driving hours on the ground that it failed to state a prima facie case. The Board has reviewed the dismissal, and finding it to be free from prejudicial error, adopts it as the decision of the Board itself.[2]

On appeal, CSEA contends a factual dispute exists, and the Board agent was not entitled to decide the merits of this case. (Eastside Union School District (1984) PERB Decision No. 466.) As the Board agent was merely interpreting the unambiguous

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> discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.
>
> (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.

[2]In adopting the Board agent's partial dismissal, the Board notes that the collective bargaining agreement which the Board agent states is effective from July 1, 1990 to June 1991 is, in fact, effective from July 1, 1988 to June 30, 1991.

In addition, the Board agent incorrectly cites Grant Joint Union High School District (1983) PERB Decision No. 196. The correct citation is Grant Joint Union High School District (1982) PERB Decision No. 196.

language of the parties' collective bargaining agreements, the Board rejects CSEA's argument.

The portion of the charge in Case No. S-CE-1373 which alleges the District violated Government Code section 3543.5(c) by failing to give employees 30 days notice of a reduction in driving hours is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairperson Hesse and Member Carlyle joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Headquarters Office
1031 18th Street
Sacramento, CA 95814-4174
(916) 322-3088

March 12, 1991

Burton Gray
CSEA, Lodi Ch. 77
8217 Auburn Blvd.
Citrus Heights CA 95610

Re: California School Employees Association and its Lodi Chapter 77 v. Lodi Unified School District
Unfair Practice Charge No. S-CE-1373
PARTIAL DISMISSAL LETTER

Dear Mr. Gray:

On September 20, 1991, CSEA filed the above charge. Specifically, CSEA has charged that the Lodi Unified School District violated Government Code section 3543.5(c). The union alleged that the District has taken unilateral action by not giving 30 days notification of reduced hours to bus drivers and by restoring hours, to bus drivers working less than full time, on a basis other than seniority.

I indicated to you in my attached letter dated February 28, 1991, that certain allegations contained in the charge did not state a prima facie case. You were advised that if there were any factual inaccuracies or additional facts that would correct the deficiencies explained in that letter, you should amend the charge accordingly. You were further advised that unless you amended these allegations to state a prima facie case, or withdrew them prior to March 5, 1991, the allegations would be dismissed.

I have not received either a request for withdrawal or an amended charge and am therefore dismissing those allegations which fail to state a prima facie case based on the facts and reasons contained in my February 28, 1991, letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, you may obtain a review of this dismissal of certain allegations contained in the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal (California Code of Regulations, title 8, section 32635(a)). To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing (California Code of Regulations, title 8, section 32135). **Code of** Civil Procedure section 1013 shall apply. The Board's **address** is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

If you file a timely appeal of the refusal to issue **a complaint, any other** party may file with the Board an original and five **copies** of a statement in opposition within twenty calendar days **following** the date of service of the appeal (California Code of **Regulations,** title 8, section 32635(b)).

Service

All documents authorized to be filed herein must also be "served" **upon all** parties to the proceeding, and a "proof of service" must **accompany** each copy of a document served upon a party or filed **with** the Board itself. (See California Code of Regulations, title 8, section 32140 for the required contents and a sample **form.)** The document will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

Extension of Time

A request for an extension of time in which to file a document with the Board itself must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party (California Code of Regulations, title 8, section 32132).

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

JOHN W. SPITTLER
General Counsel

By _____
Bernard McMonigle
Regional Attorney

Attachment

cc: Robert E. Kingsley
Pinnell & Kingsley
4401 Hazel Ave., Ste. 215
Fair Oaks CA 95628

STATE OF CALIFORNIA PETE WILSON, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Headquarters Office
1031 18th Street
Sacramento, CA 95814-4174
(916) 322-3088

February 28, 1991

Burton Gray
CSEA, Lodi Ch. 77
8217 Auburn Blvd.
Citrus Heights CA 95610

Re: California School Employees Association and its Lodi Chapter 77 v. Lodi Unified School District
Unfair Practice Charge No. S-CE-1373
WARNING LETTER

Dear Mr. Gray:

On September 20, 1990, CSEA filed the above charge. Specifically CSEA has charged that the Lodi Unified School District violated Government Code section 3543.5(c). The union has alleged that the District has taken unilateral action by not giving 30 days notification of reduced hours to bus drivers and by restoring hours, to bus drivers working less than full time, on a basis other than seniority.

My investigation indicates that there is a collective bargaining agreement between the parties which has a duration of July 1, 1990 to June 1991. The parties also have an agreement for year-round education issues. The collective bargaining agreement contains an Article XVI Layoff Procedure which applies to a reduction in hours. That article requires the employer to give employees 30 days notification prior to the implementation of reduced hours. The agreement for year-round education contains a provision for bus driver route selection. Page 21 of that agreement states in part that drivers suffering any involuntary reduction in hours will be afforded the rights available under the formal layoff process. Page 22 of the agreement contains a statement that "implementation shall be effected within two (2) weeks of completion of the route selection process." On page 23 there is a provision that route vacancies or newly created routes shall be filled by seniority.

In the summer of 1989, bus drivers went through the route selection process described under the memorandum and were given approximately two weeks notice prior to implementation of the new routes. They were not given a 30 day notification. In 1990, drivers participated in route selection on July 28. On August 21, hours were reduced.

In Grant Joint Union High School District (1983) PERB Decision No. 196, the Board set forth the elements of proof necessary to establish a unilateral change. Initially, the charging party must show that the employer breached or otherwise altered the parties' written agreement or its own established past practice. This element has not been shown in this case. It may be true that in years prior to 1989 the employer gave bus drivers 30 days' notice of reduced hours. However, different circumstances existed. In 1989, the District and the union negotiated a new bus route selection procedure which provides for two weeks notification. Two weeks notification was, in fact, given in 1989. The employer has again given a two week notification after the 1990 bus route selection. Such notice appears to comply with current practice. Accordingly, this allegation must be dismissed.

For these reasons, the allegation that the employer violated Government Codes section 3543.5(c) by not giving employees thirty days' notice of a reduction in driving hours, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or any additional facts that would correct the deficiencies explained above, please amend the charge accordingly. The amended charge should be prepared on a standard PERB unfair practice charge form clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and must be signed under penalty of perjury by the charging party. The amended charge must be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before March 5, 1991, I shall dismiss the above-described allegation from your charge. If you have any questions, please call me at (916) 322-3198.

Sincerely,

Bernard McMonigle
Regional Attorney

BMC:djt