



STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SADDLEBACK COMMUNITY COLLEGE)	
DISTRICT FACULTY ASSOCIATION,)	
CTA/NEA,)	
)	
Charging Party,)	Case No. LA-CE-3195
)	
v.)	PERB Decision No. 1004
)	
SADDLEBACK COMMUNITY COLLEGE)	June 25, 1993
DISTRICT,)	
)	
Respondent.)	

Appearances; California Teachers Association by Charles R. Gustafson, Attorney, for Saddleback Community College District Faculty Association, CTA/NEA; Littler, Mendelson, Fastiff, Tichy, & Mathiason by Richard J. Currier, Attorney, for Saddleback Community College District.

Before Blair, Chair; Hesse and Carlyle, Members.

DECISION AND ORDER

HESSE, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Saddleback Community College District Faculty Association, CTA/NEA (Association) of a Board agent's dismissal (attached hereto) of its charge. The Association alleged that the Saddleback Community College District (District) violated section 3543.5(b)

and (e) of the Educational Employment Relations Act (EERA)¹ by demonstrating bad faith during factfinding.

Having reviewed de novo the charge, PERB impasse file LA-M-2210, the appeal and the District's response, thereto, the Board finds that the charge fails to state a prima facie case. The Board also finds the Board agent's dismissal and warning letter to be free of prejudicial error and adopts them as the decision of the Board itself.

The unfair practice charge in Case No. LA-CE-3195 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chair Blair and Member Carlyle joined in this Decision.

¹EERA is codified at Government Code section 3540 et seq. Section 3543.5 states, in pertinent part:

(b) Denying to employee organizations rights guaranteed to them by this chapter.

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

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Blvd., Suite 650
Los Angeles, CA 90010-2334
(213)736-3127



January 8, 1993

Thomas L. Brown, Consultant
California Teachers Association
960 N. Amelia Avenue
San Dimas, CA 91773

Re: DISMISSAL AND REFUSAL TO ISSUE COMPLAINT, Unfair Practice Charge No. LA-CE-3195, Saddleback Community College District Faculty Association. CTA/NEA v. Saddleback Community College District

Dear Mr. Brown:

In the above-referenced charge, the Saddleback Community College District Faculty Association, CTA/NEA (Association) alleges that the Saddleback Community College District (District) refused to participate in good faith in the statutory impasse procedure. This conduct is alleged to violate Government Code sections 3543.5(b) and (e) of the Educational Employment Relations Act (EERA).

I indicated to you, in my attached letter dated December 22, 1992, that the above-referenced charge did not state a prima facie case. You were advised that, if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to January 8, 1993, the charge would be dismissed.

On January 7, 1993, I received from you an amended charge. The amended charge argues in part (for the first time) that the appointment of the factfinding panel was not effective until April 1, 1992, when the appointment letter (dated March 31, 1992) was actually mailed, or until five days later. The amended charge cites PERB Regulations 32130 and 32798, but these regulations do not support this argument. The amended charge also includes some additional allegations of fact, but these allegations do not show that the District refused to participate in the impasse procedure in good faith or engaged in a course of conduct which frustrated that procedure. Therefore, I am dismissing the charge, based on the reasons contained in my December 22 letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, you may obtain a review of this dismissal of the charge by filing

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January 8, 1993
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an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (Cal. Code of Regs., tit. 8, sec. 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 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. (Cal. Code of Regs., tit. 8, sec. 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 (20) calendar days following the date of service of the appeal. (Cal. Code of Regs., tit. 8, sec. 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 Cal. Code of Regs., tit. 8, sec. 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 (3) 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. (Cal. Code of Regs., tit. 8, sec. 32132.)

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Final Date

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

Sincerely,

ROBERT THOMPSON
Deputy General Counsel

By _____
Thomas J. Allen
Regional Attorney

Attachment

cc: Richard J. Currier, Esq.

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Blvd., Suite 650
Los Angeles, CA 90010-2334
(213) 736-3127



December 22, 1992

Thomas L. Brown, Consultant
California Teachers Association
960 N. Amelia Avenue
San Dimas, CA 91773

Re: WARNING LETTER, Unfair Practice Charge No. LA-CE-3195,
Saddleback Community College District Faculty Association,
CTA/NEA v. Saddleback Community College District

Dear Mr. Brown:

In the above-referenced charge, the Saddleback Community College District Faculty Association, CTA/NEA (Association) alleges that the Saddleback Community College District (District) refused to participate in good faith in the statutory impasse procedure. This conduct is alleged to violate Government Code sections 3543.5(b) and (e) of the Educational Employment Relations Act (EERA).

My investigation reveals the following facts.

The Association and the District were parties to a collective bargaining agreement that expired on June 30, 1991. In May 1991, the parties began negotiations for a new agreement. In September 1991, the Public Employment Relations Board (PERB) determined that the parties were at impasse and appointed a mediator. In February 1992, the mediator certified the matter for factfinding, and on March 31, 1992, PERB appointed a factfinder.

Beginning as early as February 25, 1992, the District indicated that it would not agree to waive the 30-day timeline for factfinding specified in Government Code section 3548.3(a) and that therefore "the factfinding process must conclude within thirty (30) days after the appointment of the factfinding panel." On March 16, 1992, the Association formally requested a waiver of the timeline, but the District maintained its position. On April 6, 1992, the District stated, "If the factfinding process is not concluded within the 30-day period, the District will take the position that the factfinding process is automatically concluded by law." On April 14, 1992, PERB denied the Association's request that PERB itself waive the 30-day timeline.

A factfinding hearing was scheduled for April 24, 1992. On April 16, 1992, the District proposed "expedited" factfinding based on one day of hearing, but on April 20, 1992, the Association declined. On April 24, 1992, when the parties met for the

scheduled hearing, the District indicated an unwillingness to continue the hearing after April 30, 1992. The Association then refused to proceed, and the factfinder rescheduled the hearing for April 30, 1992, and, if necessary, May 1, 1992.

The hearing got underway on April 30, 1992. At approximately 3:30 p.m., the District indicated an unwillingness to continue.

Based on the facts stated above, the charge does not state a prima facie violation of the EERA for the reasons that follow.

Government Code section 3548.3(a) provides in relevant part as follows:

If the dispute [in factfinding] is not settled within 30 days after the appointment of the [factfinding] panel, or, upon the agreement by both parties, within a longer period, the panel shall make findings of fact and recommend terms of settlement, which recommendations shall be advisory only. [Emphasis added.]

As this language makes clear, the 30-day timeline is waived only "upon agreement by both parties." Neither party has a statutory **duty to agree to such a waiver.**

The present charge alleges a course of conduct in which the District clearly and consistently maintained that it would not waive the 30-day timeline. There was no element of surprise, since the District indicated its position for over a month before the factfinder was even appointed. The present charge does not allege facts showing a course of conduct in which the District otherwise frustrated the factfinding process.¹ The charge therefore does not show that the District refused to participate in good faith in the statutory impasse procedure.

¹In a letter dated April 3, 1992, the District stated in part as follows:

Representatives of the District are ready and available to immediately commence the factfinding process in order to conclude it within the 30 day period required by law. With few exceptions, District representatives are available every day, including weekends, during the next thirty (30) days so that the factfinding process can be concluded in a timely fashion.

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For these reasons the charge, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts which would correct the deficiencies explained above, please amend the charge. 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 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 January 8, 1992, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3127.

Sincerely,

THOMAS J. ALLEN
Regional Attorney