

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



POWAY FEDERATION OF TEACHERS,)
)
Charging Party,) Case No- LA-CE-3387
)
v.) PERB Decision No. 1050
)
POWAY UNIFIED SCHOOL DISTRICT,) June 13, 1994
)
Respondent.)
_____)

Appearances: Donald S. Raczka, President, for Poway Federation of Teachers; Brown and Conradi by Clifford D. Weiler, Attorney, for Poway Unified School District.

Before Blair, Chair; Carlyle and Johnson, Members.

DECISION

BLAIR, Chair: This case is before the Public Employment Relations Board (Board) on appeal by the Poway Federation of Teachers (Federation) of a Board agent's partial dismissal (attached hereto) of its unfair practice charge. In its charge, the Federation alleged that the Poway Unified School District (District) unilaterally changed its policy on teacher supervision of student activities in violation section 3543.5(c) of the Educational Employment Relations Act (EERA).¹

The Board has reviewed the warning and dismissal letters, the original and amended charges, the Federation's appeal, the

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

It shall be unlawful for a public school employer to do any of the following:

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

District's response thereto and the entire record in this case. The Board finds the Board agent's warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself.

ORDER

The Board hereby AFFIRMS the Board agent's partial dismissal of the unfair practice charge in Case No. LA-CE-3387.

Members Carlyle and Johnson joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



March 14, 1994

Donald S. Raczka, President
Emily Shieh, Executive Director
Poway Federation of Teachers
13035 Pomerado Road, Suite B
Poway, California 92064-4208

Re: PARTIAL DISMISSAL AND REFUSAL TO ISSUE COMPLAINT, Unfair
Practice Charge No. LA-CE-3387, Poway Federation of Teachers
v. Poway Unified School District

Dear Mr. Raczka and Ms. Shieh:

In the above-referenced charge, the Poway Federation of Teachers (Federation) alleges in part that the Poway Unified School District (District) unilaterally changed a policy on the supervision of student activities. This conduct is alleged to violate Government Code section 3543.5(c) of the Educational Employment Relations Act (EERA).

I indicated to you, in my attached letter dated March 3, 1994, that the unilateral change 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 which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended these allegations to state a prima facie case or withdrew them prior to March 11, 1994, the allegations would be dismissed.

On March 10, 1994, you filed by express mail a first amended charge. The amended charge does not contain significant additional facts, but it does attempt to state a theory distinct from the one stated in the original charge. While the original charge argued that the District could not unilaterally require supervision of student activities by non-volunteers, the amended charge argues that the District could not unilaterally assign supervision of student activities to non-volunteers. This is a distinction without a real difference, however. To say that the District could not assign non-volunteers to supervise student activities would rob of its plain meaning the language in Board Policy Section 4.205 that such supervision "is required as a condition of employment." If that language means anything, it means that the District is not limited to assigning volunteers to

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supervise student activities.¹ I am therefore dismissing the unilateral change allegations, based on the facts and reasons contained in this letter and my March 3 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. (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

¹ It appears from the charge that the District initially attempted to assign volunteers, and then assigned nonvolunteers as necessary. It does not appear how the District could have exercised its right to require supervision of student activities as a condition of employment without assigning nonvolunteers.

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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.)

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: Clifford D. Weiler, Esq.

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Blvd., Suite 650
Los Angeles, CA 90010-2334
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March 3, 1994

Donald S. Raczka, President
Emily Shieh, Executive Director
Poway Federation of Teachers
13035 Pomerado Road, Suite B
Poway, California 92064-4208

Re: PARTIAL WARNING LETTER, Unfair Practice Charge No.
LA-CE-3387, Poway Federation of Teachers v. Poway Unified
School District

Dear Mr. Raczka and Ms. Shieh:

In the above-referenced charge, the Poway Federation of Teachers (Federation) alleges that the Poway Unified School District (District) unilaterally changed policy on supervision of student activities. This conduct is alleged to violate Government Code section 3543.5(c) of the Educational Employment Relations Act (EERA).

My investigation of this allegation reveals the following relevant facts.

The Federation is the exclusive representative of a unit of the District's certificated employees. The collective bargaining agreement between the Federation and the District provides in part as follows, in Section VIII (Hours of Employment):

Teachers shall remain on duty after the close of the school day long enough to ensure a professional and adequate performance in the discharge of professional responsibilities as required in the appropriate job classification description and specified in Board Policy.

Section VIII further provides as follows:

UNAUTHORIZED ABSENCE

Unauthorized absence is defined as non-performance of those duties and responsibilities assigned by the District and its representatives including all duties and

responsibilities as defined by the Education Code, Policies of the Board of Education, the rules and regulations of the District, and the provisions of this agreement.

Unauthorized absence may include, but is not limited to, refusals to provide service, unauthorized use of sick leave, unauthorized use of leave benefits, non-attendance at required meetings, and failing to perform supervisory functions at school-sponsored activities.

District Board Policy Section 4.205 (Teacher Responsibility) provides in part as follows:

In addition to instructional duties, responsibilities and tasks which are primary, teachers are responsible, secondarily, for related instructional, co-curricular, and student social and recreational activities. Participation in such activities is required as a condition of employment and includes, but is not limited to, the following activities:

.

Sponsor, chaperon and supervise student activities including athletic contests, recitals, theatrical presentations, dances, and social activities.

The charge nonetheless alleges that the District's "past practice established student activity supervision as a voluntary activity in the District" and that the District unilaterally changed policy by assigning supervision of student activities to Poway High School teachers who did not volunteer.

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

In Marysville Joint Unified School District (1983) PERB Decision No. 314 (at pp. 8-9), PERB explained as follows (citations omitted):

An employer violates its duty to negotiate in good faith when it unilaterally changes an established policy affecting a negotiable subject matter without affording the exclusive representative a reasonable opportunity to bargain. Established policy may be embodied in the terms of a collective agreement or, where a contract is silent or ambiguous as to a policy, it may be ascertained by examining past practice or bargaining history. However, where contractual language is clear and unambiguous, it is unnecessary to go beyond the plain language of the contract itself to ascertain its meaning.

In Marysville, PERB found that the plain meaning of a collective bargaining agreement that provided lunch breaks of "no less than 30 minutes" was not superseded by a consistent past practice of 55-minute lunch breaks. PERB concluded as follows (at p. 10, citation omitted):

The mere fact that an employer has not chosen to enforce its contractual rights in the past does not mean that, ipso facto, it is forever precluded from doing so. Accordingly, we find that the Association, by agreeing to a contractual provision which plainly permitted the District to grant teachers a lunch period of 30 minutes or longer at its discretion, waived its right to negotiate over the District's reduction of the lunch period to 30 minutes.

PERB therefore dismissed the allegation that the reduction of lunch breaks from 55 minutes to 30 minutes was an unlawful unilateral change in policy.

In the present case, as in Marysville, the meaning of the collective bargaining agreement is plain. Under Section VIII of the agreement, teachers are required to remain on duty to discharge responsibilities "specified in Board Policy." Board Policy Section 4.205 specifies that one of those responsibilities is to "supervise student activities." Furthermore, Section VIII of the agreement specifies that unauthorized absence may include "failing to perform supervisory functions at school-sponsored activities." The plain meaning of the agreement, that supervision of student activities may be required, is not superseded by the alleged past practice of using volunteers, and

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the assignment of non-volunteers therefore was not an unlawful unilateral change of policy.

For these reasons the unilateral change allegation, 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 March 11, 1994, I shall dismiss the above-described allegation from your charge. If you have any questions, please call me at (213) 736-3127.

Sincerely,

Thomas J. Allen
Regional Attorney

TJA:we