

OVERRULED IN PART by City of San Jose
(2013) PERB Decision No. 2341-M

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



UNITED ADMINISTRATORS OF OAKLAND)
SCHOOLS,)
)
Charging Party,) Case No. SF-CE-1847
)
v.) PERB Decision No. 1156
)
OAKLAND UNIFIED SCHOOL DISTRICT,) June 12, 1996
)
Respondent.)
_____)

Appearance; Berger, Nadel & Vannelli by Robert D. Links,
Attorney, for United Administrators of Oakland Schools.

Before Garcia, Johnson and Dyer, Members.

DECISION

GARCIA, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the United Administrators of Oakland Schools (UAOS) to a Board agent's dismissal and refusal to issue complaint (attached) of an unfair practice charge. The unfair practice charge alleged that the Oakland Unified School District (District) violated the Educational Employment Relations Act (EERA) section 3543.5(a), (b) and (c) by renegeing on a tentative agreement.¹

¹EERA is codified at Government Code section 3540 et seq. EERA section 3543.5 provides, in 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 discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

After reviewing the record, including the original and amended unfair practice charge, the warning and dismissal letters, and UAOS's appeal, the Board hereby affirms the dismissal and refusal to issue complaint consistent with the following discussion.

DISCUSSION

On appeal, UAOS asserts that its allegation in the unfair practice charge that the District acted with an improper motive is sufficient to establish a prima facie case. The Board disagrees. We find that the Board agent correctly applied the totality of conduct test, absent an allegation of a per se violation. We also affirm the Board agent's conclusion and hold that the allegation of a single indicia of bad faith bargaining (in this case, the allegation of reneging on a tentative agreement) did not establish a prima facie case of bad faith bargaining.

ORDER

The unfair practice charge in Case No. SF-CE-1847 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Johnson and Dyer joined in this Decision.

(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.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



February 22, 1996

Robert D. Links, Esq.
Berger, Nadel & Vannelli
One California Street, Suite 2750
San Francisco, California 94111

Re: Unfair Practice Charge No. SF-CE-1847, United Administrators of Oakland Schools v. Oakland Unified School District
DISMISSAL AND REFUSAL TO ISSUE COMPLAINT

Dear Mr. Links:

The above-referenced charge alleges the Oakland Unified School District (District) violated Educational Employment Relations Act (EERA or Act) section 3543.5(a), (b) and (c) by reneging on a tentative agreement.

I indicated to you, in my attached letter dated February 13, 1996, that the above-referenced charge did not state a prima facie case.¹ 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 February 23, 1996, the charge would be dismissed.

The first amended charge provides additional information regarding the timing of the District's repudiation of the tentative agreement. On October 9, 1995, the Association's executive council ratified the tentative agreement. On October 11, 1995, the Association's members ratified the tentative agreement. The amended charge alleges Gates, the District's representative, called to renege on the tentative agreement after the Association ratified the tentative agreement, approximately October 13, 1995.

¹Although listed correctly in the heading, a footnote in the February 13, 1996 letter incorrectly indicated the District's charge against the Association as Unfair Practice Charge No. SF-CE-1847. • The District's charge against the Association should have been listed as SF-CO-500.

As noted in the February 13, 1995, letter, renegeing on a tentative agreement is one indicia of bad faith bargaining. However, that letter also indicated one indicia alone is insufficient to establish bad faith under the totality of conduct test. In a letter accompanying the amended charge, you described the amended charge as follows:

The basic facts are the same, but the amendment focuses on the District's motive, which the Union contends was to discredit the Union for the purpose of enabling the District to escape liability on a contractual commitment and reopen negotiation that had already concluded.

As this description suggests, the amended charge does not provide any new factual allegations regarding the District's conduct. For this reason, in addition to the reasons provided in the February 13, 1996, letter, the charge is dismissed.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, you may obtain a review of this dismissal of 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).)

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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.)

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

Tammy L. Samsel
Regional Attorney

Attachment

cc: Walter L. Rowson, Executive Director
United Administrators of Oakland Schools

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Blvd., Suite 650
Los Angeles, CA 90010-2334
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February 13, 1996

Walter L. Rowson,
Executive Director
United Administrators
of Oakland Schools
Post Office Box 21275
Oakland, California 94620

Re: Unfair Practice Charge No. SF-CE-1847, United Administrators of Oakland Schools v. Oakland Unified School District
WARNING LETTER

Dear Mr. Rowson:

The above-referenced charge alleges the Oakland Unified School District (District) violated Educational Employment Relations Act (EERA or Act) section 3543.5(a), (b) and (c) by reneging on a tentative agreement. The District also filed an unfair practice charge against the United Administrators of Oakland Schools (Association) regarding the same facts.¹

The Association and the District were negotiating for a three-year contract. On October 6, 1995, the parties reached a final tentative agreement. The tentative agreement stated in pertinent part,

Unit members shall be granted a salary increase of 3.5 percent effective January 1, 1996.

The Association alleges Clifford Gates, a District representative, later called Walter Rowson, Executive Director of the Association, and explained the District could not meet the terms of the tentative agreement.

Essentially, the dispute concerns two varying interpretations of the above-quoted language. The Association contends under the terms of the tentative agreement the unit members should receive a 3.5 percent increase in both the 1995-1996 school year and the 1996-1997 school year. In a October 13, 1995 letter from Gates to Rowson, the District explained its position as follows,

¹Both parties filed their respective charges on November 1, 1995. The District's charge against the Association is Unfair Practice Charge No. SF-CE-1847.

You will remember that when your counter proposal of 3.5 percent COLA effective January 1, 1996, was discussed across the table, your explanation was that it represented the identical offer of the District - merely delayed for six months.

I explained that discussion to Mr. Hal [Assistant Superintendent] and further advised him that for fiscal year 1996 UAOS wages (insofar as this portion of the T.A. is concerned) would be identical to our 1.75 percent offer. Therefore, administratively the District would adjust the COLA for fiscal year 1995-96 to conform with that understanding (i.e., 1995-96 COLA will result in a 1.75 percent annual COLA for the fiscal year 1996-97): example: 3.5 percent for six months equals 1.75 percent for the entire fiscal year 1996-97.

On October 10, 1995, the parties met to discuss this issue, but did not resolve their differences.

The totality of conduct test is generally applied to determine whether an employer engaged in good faith bargaining. This test examines the entire course of negotiations to determine whether the employer had the requisite intention of reaching an agreement. (Pajaro Unified School District (1978) PERB Decision No. 51.) Although the totality of conduct test is generally applied, some conduct is considered to be a "per se" violation without a determination of the employer's subjective intent.² As conduct alleged in the charge does not fall into one of the per se categories, the totality of conduct test will apply.

Under the totality of conduct test, the Board considers several factors as indicative of bad faith bargaining, including: (1) frequent turnover in negotiators, (2) negotiator's lack of authority, (3) lack of preparation for bargaining sessions, (4)

²The per se categories include: (1) an outright refusal to bargain; (2) refusal to provide information necessary and relevant to the employee organization's duty to represent bargaining unit employees; (3) insistence to impasse on non-mandatory subject of bargaining; (4) bypassing the employee organization's negotiators; and (5) implementation of a unilateral change in working conditions without notice and an opportunity to bargain. (South Bay Union School District (1990) PERB Decision No. 815.)

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missing, delaying of cancelling bargaining sessions, (5) insistence on ground rules before negotiating substantive issues, (6) taking an inflexible position, (7) regressive bargaining proposals, (8) predictably unacceptable counterproposals, and (9) repudiation of a tentative agreement. However, the presence of one indicia alone is insufficient to establish bad faith.

Applying the totality of conduct test, the facts of this case fail to demonstrate the District lacked the subjective intent to reach an agreement. The charge's only allegation is that the District reneged on the parties' tentative agreement. Reneging on a tentative agreement is an indicia of bad faith. (Alhambra City and High School Districts (1986) PERB Decision No. 560.) However, as noted above, the presence of one indicia alone is insufficient to establish bad faith. Accordingly the charge fails to present a prima facie violation.

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 February 23, 1996. I shall dismiss your charge. If you have any questions, please call me at (213) 736-7508.

Sincerely,

Tammy L. Samsel
Regional Attorney