STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

STOCKTON TEACHERS ASSOCIATION, CTA/NEA,	)	
Charging Party,	)	Case No. SA-CE-1693
v.	)	PERB Decision No. 1211
STOCKTON UNIFIED SCHOOL DISTRICT,	)	June 24, 1997
Respondent.	)	

Appearances; California Teachers Association by A. Eugene Huguenin, Jr., Attorney, for Stockton Teachers Association, CTA/NEA; Kronick, Moskovitz, Tiedemann & Girard by James Scot Yarnell, Attorney, for Stockton Unified School District.

Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Stockton Unified School District (District) to a Board administrative law judge's (ALJ) proposed decision. In his decision, the ALJ found that the District violated section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA)[1] when it unilaterally implemented a policy allowing

[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. EERA section 3543.5 provides, in relevant 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

simultaneous weapons searches of teachers and students without providing the Stockton Teachers Association, CTA/NEA (Association) with notice and an opportunity to meet and confer over the change.

The Board has reviewed the entire record in this case, including the proposed decision, the hearing transcript, the District's exceptions, and the Association's response thereto. For the reasons that follow, the Board reverses the ALJ's decision and dismisses the charge and complaint.

PROCEDURAL HISTORY

On August 11, 1995, the Association filed an unfair practice charge with the Board. On October 27, 1995, after a partial withdrawal of the charge, the Board's General Counsel issued a complaint on the charge. The complaint alleged that the District had violated the EERA "by imposing a random weapons search procedure using metal detectors on employees." The District answered the complaint on November 15, 1995.

Following two days of formal hearing, the ALJ issued a proposed decision holding that the District's conduct violated EERA section 3543.5(a), (b) and (c). On February 25, 1997, the

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> 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.

District filed exceptions to the ALJ's proposed decision. The Association responded to those exceptions on April 7, 1997.

FACTS

The District is a public school employer within the meaning of EERA section 3540.1(k). The Association is an employee organization as defined by EERA section 3540.1(d) and the exclusive representative of an appropriate unit of employees within the meaning of EERA section 3540.1(e).[2]

On November 23, 1993, the District's governing board adopted a resolution permitting secondary school administrators to purchase hand held metal detectors as a means of implementing the District's policy prohibiting weapons possession by students. In approving this resolution, the governing board required:

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[2]EERA section 3540.1 provides, in relevant part:

> As used in this chapter:
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> (d) "Employee organization" means any organization which includes employees of a public school employer and which has as one of its primary purposes representing those employees in their relations with that public school employer. "Employee organization" shall also include any person such an organization authorizes to act on its behalf.
>
> (e) "Exclusive representative" means the employee organization recognized or certified as the exclusive negotiating representative of certificated or classified employees in an appropriate unit of a public school employer.
>
> (k) "Public school employer" or "employer" means the governing board of a school district, a school district, a county board of education, or a county superintendent of schools.

(1) that random searches be nondiscriminatory; (2) that signs be posted at school access points; and (3) that metal detector operators be trained. Thereafter, William Correll (Correll), the chief of the District's police force, developed a District-wide policy implementing the governing board resolution. That policy provided that random searches would cover all individuals on District grounds, including teachers.

Correll provided training to District personnel in March of 1994. Because of delays in equipment purchases, the District did not actually implement the metal detector program until the fall of 1994. At that time, the District posted notices regarding the searches and distributed similar notices to staff.

Andres Torres (Torres), the principal at Model Alternative School (MAS) decided that all MAS metal detector searches would be conducted inside classrooms. Torres discussed and demonstrated metal detector searches of teachers at faculty meetings on October 11 and November 17, 1994. These meetings were attended by Lucinda Soule, the Association site representative for MAS. Torres began performing searches, both of students and of staff, in the fall of 1994.

On January 27, 1995, Sal Zendejas (Zendejas), an Association site representative at Franklin High School and member of the Association executive board, met with Franklin's vice principal, Greg Zavala (Zavala). Zendejas complained that teachers should not be subjected to metal detector searches. Zavala responded with a memorandum indicating that teachers would not be exempted

from these searches. Zendejas also spoke to Correll, who told him that the District would continue to perform random metal detector searches on teachers.

On January 31, 1995, Torres and two counselors performed a random metal detector search of the students in Betsy Stafford's (Stafford) classroom at MAS. After completing the search of students, one of the counselors performed a metal detector search of Stafford. That day, Stafford called Association Executive Director Joe Nunez (Nunez) to complain about the metal detector search. Nunez contacted Association President Marcia Knudsen (Knudsen) and the two began to investigate the matter.

After two unsuccessful attempts, Nunez reached the District's Director of Secondary Education, Carl Toliver (Toliver) on February 3, 1995. Toliver informed Nunez of the District's policy concerning metal detector searches and promised that Correll would provide a copy of that policy to the Association. When Nunez had not received the information by February 8, 1995, he wrote to Toliver reminding him of the request.[3]

Knudsen spoke with Correll on February 9 and 13, 1995. On both dates, Knudsen requested that Correll provide the Association with the District's written policy regarding metal

[3]In early February, 1995, Toliver directed Correll to cease and desist the searches until the controversy was resolved. No teachers have been subjected to searches since Toliver's cease and desist went into effect.

detector searches of staff. Correll mailed the Association a copy of the District's policy on February 14, 1995.

DISCUSSION

EERA section 3541.5(a)(I)[4] precludes the Board from issuing a complaint on any charge based on an alleged unfair practice occurring more than six months prior to the filing of the charge. This six-month time limit is mandatory and jurisdictional. (Los Angeles Unified School District (1996) PERB Decision No. 1180, proposed dec. at p. *8.)* The burden of proving timeliness lies with the charging party. (Tehachapi Unified School District (1993) PERB Decision No. 1024 at p. 3.)

The six-month time limit begins to run when the charging party knew or should have known of the conduct giving rise to the unfair practice. (Fairfield-Suisun Unified School District (1985) PERB Decision No. 547, warning letter at p. 2.) In unilateral change cases, therefore, the charging party must demonstrate that it neither knew nor should have known of the change more than six months before it filed the charge. (Los Angeles Unified School District (1996) PERB Decision No. 1180, proposed decision at pp. 9-11.) In this case, the Association filed its charge on August 11, 1995. Thus, in order for the

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[4]EERA Section 3543.1(a)(1) provides, in relevant part:

> (a) . . . the board shall not do either of the following:
>
> (1) Issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge.

charge to be timely, the Association must have learned of the alleged unilateral change on or after February 11, 1995.

The record reflects that an aggrieved teacher complained to the Association about a metal detector search on January 31, 1995. *On* February 3 and 9, 1995, the Association contacted the District's director of secondary education and chief of police to discuss the policy underlying this search. After these conversations, the Association either knew or should have known that the January 31 search reflected the District's policy. Nonetheless, the Association waited until August 11, 1995 to file its charge. Based on the foregoing, the charge is untimely and must be dismissed.

ORDER

The unfair practice charge and complaint in Case No. SA-CE-1693 are hereby DISMISSED WITHOUT LEAVE TO AMEND.

Member Johnson joined in this Decision.

Chairman Caffrey's dissent begins on page 8.

CAFFREY, Chairman, dissenting: I dissent. The Stockton Teachers Association, CTA/NEA (Association) timely filed its charge alleging that the Stockton Unified School District (District) unilaterally implemented a policy of searching teachers for weapons and refused the Association's demand to bargain over the decision to implement the policy. This conduct was alleged to violate section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA).

EERA section 3541.5(a)(1) states that PERB shall not "[i]ssue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." This provision constitutes a bar to the Public Employment Relation Board's (PERB) jurisdiction which cannot be waived by the parties or PERB itself. (California State University, San Diego (1989) PERB Decision No. 718-H.) The six-month period begins to run when the charging party knew or should have known of the conduct giving rise to the alleged unfair practice. (Fairfield-Suisun Unified School District (1985) PERB Decision No. 547.) In unilateral change cases, the limitations period begins to run when the charging party has actual or constructive notice of the respondent's clear intent to implement a unilateral change in policy, provided that nothing subsequently evidences a wavering of that intent. (The Regents of the University of California (1990) PERB Decision No. 826-H.)

The Association filed its unfair practice charge on August 11, 1995. In order for the charge to be timely,

therefore, the Association must have learned of the conduct giving rise to the charge on or after February 11, 1995. Conversely, if the Association had actual or constructive notice prior to February 11, 1995, of the District's clear intent to implement the alleged unilateral change in policy, and there was no subsequent wavering of that intent, the Association's charge is untimely.

As noted by the majority, on November 23, 1993, the District approved the use of handheld metal detectors by secondary school administrators. Approval was granted to further the District's policy prohibiting the possession of weapons on school property by students. There was no reference to searches of teachers in the consideration of this item by the District's Governing Board prior to its approval. One Governing Board member expressed concern about conducting random searches. Thereafter, William Correll (Correll), chief of the District's police force, developed guidelines for implementing the Governing Board's resolution. These guidelines apparently were not shared or discussed with the Association by Correll. While the guidelines reference searches of "students/staff," they appear primarily to be aimed at searches of students, and make no reference to searches of students or staff in the classroom.

On January 31, 1995, a random metal detector search was conducted in the classroom of Betsy Stafford (Stafford) at the District's Model Alternative School. Stafford and all of her students were subjected to the search in the classroom. Neither

the policy adopted by the Governing Board on November 23, 1993, nor the guidelines subsequently developed by Correll, provides for the metal detector search of a teacher in the classroom.

Nonetheless, when the Association made contact with the District on February 3, 1995, it was told that the search of Stafford was in accordance with District policy, apparently in reference to the November 23, 1993, Governing Board resolution, and Correll's guidelines. The District informed the Association that Correll would forward documentation of the policy to the Association. Correll provided the documentation in a February 14, 1995, mailing after several requests from the Association.

On February 13, 1995, having not yet received any documentation from the District, the Association demanded to bargain over the District's decision to implement a weapons search program involving the search of teachers in their classrooms in the presence of their students. The District responded by letter, dated February 22, 1995, that the subject of metal detector searches of employees was a matter of management prerogative. On February 23, 1997, however, the District instructed all secondary schools to stop the practice of random searches with metal detectors.

A series of renewed demands to bargain by the Association, and refusals by the District, ensued over the following months.

On June 6, 1995, the District sent the Association a letter under the subject "Teacher Weapon Searches." Attached was a

proposed policy on the use of metal detectors to be considered by the District's Governing Board on June 13. The proposed policy at that point referred to searches of any person and appeared to provide for searches in the classroom. By the July 25, 1995 Governing Board meeting, however, the proposed policy had been revised to provide that random metal detector searches in the classroom would be limited to students. By the August 8, 1995 Governing Board meeting, the proposed policy had been revised again to indicate that random metal detector searches would not be conducted in the classroom at all. Throughout this process, the Association continued to demand, and the District continued to refuse, to bargain over the subject.

Based on this course of events, the majority concludes that "the Association either knew or should have known that the January 31 search reflected the District's policy." In my view, this conclusion is not supported by the facts of the case.

Prior to February 11, 1995, the District did not have a clear, consistent, unwavering policy concerning metal detector searches of teachers. Despite the District's assertion to the contrary, the search of Stafford on January 31, 1995, was not authorized by the resolution adopted by the Governing Board on November 23, 1993, which was directed at possession of weapons by students. Further, the guidelines unilaterally adopted by the District and not shared with the Association do not provide for classroom searches of teachers. At the time of the January 31 classroom metal detector search of Stafford, the District had no

policy which authorized such a search. In fact, it does not appear that the District at that time had a clear intent to implement such a policy, and the District's intent became even less clear thereafter when it stopped all random metal detector searches on February 23. Finally, the consideration in June, July and August 1995 by the Governing Board of various proposed policies covering metal detector searches of employees makes it absolutely evident that there was no clear, consistent policy in effect prior to February 11, 1995.

It is clear from the record that the District at no time has had a policy of allowing searches of teachers in their classrooms, as was done in the January 31, 1995, search of Stafford; and arguably did not have a clear, consistent policy on the subject of metal detector searches until the adoption of the August 8, 1995, proposal. Accordingly, I find no support for the majority's conclusion that the Association's August 11, 1995, charge is untimely.

There may be no more fundamental responsibility for those directing our public education systems than to provide a safe, secure environment in which children can learn, and teachers and other employees can teach and work. Similarly, because the need for a safe and secure work environment is so basic, "safety conditions of employment" is an enumerated subject within the scope of representation under EERA section 3543.2. On an issue as critical as school safety, the responsibilities of management

and the rights of employees must be balanced and made to complement one another so that the common goal is achieved.

This case presents PERB with the opportunity to balance and harmonize these responsibilities and rights, and provide guidance to the parties in this increasingly important area. Unfortunately, however, my colleagues' decision to find the Association's charge untimely eliminates that opportunity.