

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



RICHARD A. HERNANDEZ,	)	
	)	
Charging Party,	)	Case No. SF-CE-1949
	)	
v.	)	PERB Decision No. 1236
	)	
EAST SIDE UNION HIGH SCHOOL	)	December 1, 1997
DISTRICT,	)	
	)	
Respondent.	)	

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Appearance: Richard A. Hernandez, on his own behalf.  
Before Caffrey, Chairman; Johnson and Amador, Members.

DECISION

JOHNSON, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Richard A. Hernandez (Hernandez) to a Board agent's dismissal of his unfair practice charge. In his charge, Hernandez alleged that the East Side Union High School District (District) violated the Educational Employment Relations Act (EERA)<sup>1</sup> by assigning him to teach outside his credentialed area in violation of a provision of the collective bargaining agreement (CBA) between the District and the East Side Teachers Association (Association).

BACKGROUND

Hernandez is employed as an instructor in the District, and is exclusively represented by the Association. The District and the Association are parties to a CBA in effect from

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<sup>1</sup>EERA is codified at Government Code section 3540 et seq.  
•Unless otherwise indicated, all statutory references herein are to the Government Code.

August 31, 1996 through August 30, 1999. Article 8 of the CBA states, in pertinent part:

8.3 Reassignments will not be arbitrary or capricious. Such placements must conform to Ed. Code and credential requirements.

8.5 The District will make every effort to balance teacher schedules so that equal opportunity is afforded all unit members who request to teach all levels of courses, regardless of seniority.

On July 2, 1997, Hernandez filed the instant unfair practice charge, which states in its entirety:

-See Attached Papers- Violated Article 8.3 of the collective Bargaining agreement. Assigned Richard Hernandez to teach outside of his credentialed area and did this with full knowledge that this did not conform to the Ed. Code.

The Board agent dismissed his charge for lack of standing.

#### HERNANDEZ' APPEAL

Hernandez filed an appeal which challenges the basis on which the Board agent dismissed his charge.

#### DISCUSSION

Although the Board agent dismissed this case for lack of standing, we conclude that EERA requires us to dismiss the charge for a different reason.<sup>2</sup> EERA section 3541.5(b) provides that:

The board shall not have the authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of any agreement that would not also constitute an unfair practice under this chapter.

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<sup>2</sup>Because this case is being dismissed for a different reason, we will not address the standing issue.

In Grant Joint Union High School District (1982) PERB

Decision No. 196, the Board discussed this statutory limit on its authority to enforce agreements between parties. The Board observed:

This is not to say that every breach of contract also violates the Act. Such a breach must amount to a change of policy, not merely a default in a contractual obligation, before it constitutes a violation of the duty to bargain. This distinction is crucial. A change of policy has, by definition, a generalized effect or continuing impact upon the terms and conditions of employment of bargaining unit members. On the other hand, when an employer unilaterally breaches an agreement without instituting a new policy of general application or continuing effect, its conduct, though remediable through the courts or arbitration, does not violate the Act.

Thus, an alleged contract breach must also constitute a change in policy having a generalized effect or continuing impact on the terms and conditions of employment of bargaining unit members before PERB can find it to be a violation of EERA.

Hernandez alleges that the District breached the CBA. He provides no facts or allegations to demonstrate that the District's action also constitutes a change in policy having a generalized effect or continuing impact on bargaining unit members, in violation of EERA. Based on EERA section 3541.5(b), the Board has no authority to either enforce the parties' agreement or to issue a complaint based on Hernandez' charge.

ORDER

The unfair practice charge in Case No. SF-CE-1949 is hereby  
DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Amador joined in this Decision.