STATE OP CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

KERN HIGH SCHOOL DISTRICT, Charging Party,	)	Case No. LA-CO-759
v.	)	PERB Decision No. 1265
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, CHAPTER #747, Respondent.	)	May 27, 1998

Appearances: Schools Legal Service by Carl B.A. Lange III, Director of Labor Relations, for Kern High School District; California School Employees Association by Karen L. Hartmann, Attorney, for California School Employees Association, Chapter #747.

Before Caffrey, Chairman; Amador and Jackson, Members.

DECISION

JACKSON, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Kern High School District (District) of a Board agent's dismissal of the unfair practice charge and refusal to issue a complaint.

The District alleged that the California School Employees Association, Chapter #747 (Association) breached its duty to bargain in good faith in violation of section 3543.6(c) of the Educational Employment Relations Act (EERA)[1] when, after reaching

[1]EERA is codified at Government Code section 3540 et seq. Section 3543.6 provides, in pertinent part:

> It shall be unlawful for an employee organization to:
>
> (c) Refuse or fail to meet and negotiate in good faith with a public school employer of any of the employees of which it is the

a tentative agreement on a collective bargaining agreement, two members of the Association's four or five member bargaining team actively campaigned against the Association's ratification of the agreement.

The Board has reviewed the entire record in this case, including the Board agent's warning and dismissal letters, the unfair practice charge, the District's appeal, and the Association's response. Based upon the following discussion, the Board finds that the District stated a prima facie case that the Association breached its duty to bargain in good faith and orders that a complaint be issued.

DISCUSSION

The District has alleged that two Association negotiators, after reaching tentative agreement on a collective bargaining agreement covering the 1997-98 and 1998-99 school years, "actively campaigned against ratification of the tentative agreement." One member of the Association bargaining team is alleged to have worn a "VOTE NO" button in the workplace.

PERB has previously considered charges involving the conduct of negotiators who have reached a tentative agreement. In Placerville Union School District (1978) PERB Decision No. 69 (Placerville), after reaching a tentative agreement with the union, the district's negotiator recommended deletion of a significant provision which the school board unilaterally deleted. The district negotiator had pledged to the union that

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exclusive representative.

he would support the entire tentative agreement. The Board found the negotiator's conduct in recommending against the portion of the agreement to constitute an unfair practice. (Placerville.)

It is clear that the principle set forth in Placerville applies equally to both employer and union negotiators. In Alhambra City and High School Districts (1986) PERB Decision No. 560, p. 14, (Alhambra), the Board addressed the obligation of negotiators who have reached a tentative agreement:

> Absent good cause, once a tentative agreement is reached, there is an implication that both parties' negotiators will take the agreement to their respective principals in a good faith effort to secure ratification. (NLRB v. Electra-Food Machinery (9th Cir. 1980) 621 F.2d 956 [104 LRRM 2806]; H. J. Heinz Company v. NLRB (1941) 311 U.S. 514 [7 LRRM 291].) While a tentative agreement does not bind either side, it does imply that the negotiators will not 'torpedo' the proposed collective bargaining agreement or undermine the process that has occurred. (Alhambra, p. 14.)

We find that the District has sufficiently alleged that the actions of these two negotiating team members have undermined their obligation to: "take the agreement to their respective principals in a good faith effort to secure ratification." (Alhambra.) The negotiators' alleged active campaigning against ratification of the contract may have "torpedoed" the tentative collective bargaining agreement and undermined the process sufficient to call into question the Association's good faith. In other words, the complaint of the District is sufficient as it alleges that the Association negotiators did not make a good faith attempt to secure ratification of the tentative agreement

since nearly half of the Association's bargaining team was campaigning against it.

ORDER

Based upon the forgoing, the Board finds that the District stated a prima facie case for a violation of EERA section 3543.6(c) as required by Alhambra[2] and hereby orders this case REMANDED to the General Counsel for issuance of a complaint as discussed herein.

Chairman Caffrey and Member Amador joined in this Decision.

[2]The Board found in Oakland Unified School District (1996) PERB Decision No. 1156, that the presence of one of the indicia of bad faith alone is insufficient to warrant an overall finding of bad faith. However, under Alhambra when a negotiator's action is destructive to the bargaining process or "torpedoes" a proposed agreement, this alone may be sufficient indication of bad faith to warrant the issuance of a complaint or otherwise constitute an unfair practice.