STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SAN JUAN TEACHERS ASSOCIATION, CTA/NEA,	
Charging Party,	Case No. SA-CE-2149-E
v.	PERB Decision No. 1616
SAN JUAN UNIFIED SCHOOL DISTRICT,	April 5, 2004
Respondent.	

Appearances: California Teachers Association by Ramon E. Romero, Attorney, for San Juan Teachers Association, CTA/NEA; Diana D. Halpenny, General Counsel, for San Juan Unified School District.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the San Juan Teachers Association, CTA/NEA (Association) of a Board agent's dismissal of its unfair practice charge. The charge alleged that the San Juan Unified School District (District) violated the Educational Employment Relations Act (EERA) [1] by unilaterally changing a past practice in eliminating shared contract positions without the consent of the shared contract teachers. The Association alleged that this conduct constituted a violation of EERA section 3543.5(a), (b) and (c).

Upon review of the entire record, including the unfair practice charge, the District's response, the amended charge, the warning letter and dismissal, the Association's appeal, and

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

the District's response to the Association's appeal, the Board affirms the Board agent's dismissal consistent with the discussion below.

BACKGROUND

The parties' current collective bargaining agreement (CBA) is in effect from July 1, 2001 through June 30, 2004. CBA Article 10, entitled Pre-Retirement Work Program, provides eligible unit employees with a half-time work option that can only be revoked with the mutual consent of the member and the District. In its charge, the Association alleges that before August 28, 2002, the District also had a practice of allowing part-time employment in shared contract positions at some of its elementary schools and these positions were never eliminated without the consent of the teachers assigned to those positions. Article 8, section 8.7 of the CBA requires the parties to establish a joint committee to develop guidelines for these positions.

On April 9, 2002, the Association learned that the District was involuntarily transferring Carol Hathaway (Hathaway), a half-time teacher in a shared contract position at Kelley Elementary School. The District explained that it had excess teaching staff. However, the District retained a full-time, temporary teacher, Lorraine Bonnington, who had less District seniority than Hathaway. CBA Article 4, section 4.301(f) requires that involuntary transfers be made by reverse District-wide seniority. The Association filed a grievance that Hathaway's involuntary transfer violated CBA Article 4. The grievance was arbitrated and the arbitration was scheduled to be completed on April 10, 2003.[2] At the beginning of the arbitration, the parties stipulated that the issue to be arbitrated was whether Hathaway's involuntary transfer violated the CBA.

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[2]The issue of whether the involuntary transfer constituted an unfair practice is not before the Board.

On August 28, 2002, the Association learned that the shared contract position occupied by Hathaway and Colleen Manak (Manak) was eliminated at Kelley Elementary School in that Hathaway's position was not filled by another part-time teacher. Neither teacher consented to its elimination.

Also on August 28, the Association learned about the unilateral elimination of another position at Coleman Elementary School by means of another involuntary transfer similar to Hathaway's. The Association filed a grievance for the teacher, Stephanie Bauer (Bauer). The Association is awaiting the outcome of the Hathaway grievance before proceeding to arbitration with the Bauer grievance. Neither Bauer nor the other part-time teacher consented to the elimination of the shared contract position.

The Association alleges that the fact that two shared contract positions were eliminated evinces a pattern of conduct to change the past practice. The District had announced in the Bauer grievance that it may eliminate all non-pre-retirement shared contract positions. According to the Association, this conduct meets the test in Grant Joint Union High School District (1982) PERB Decision No. 196 (Grant) for unlawful unilateral change.

The Board agent dismissed the charge for failure to state a prima facie case of unilateral change finding that the Association did not provide evidence of past practice and that the elimination of the shared contract provisions was not a matter within the scope of representation.

DISCUSSION

The District first argues that the Association's allegation regarding elimination of the shared contract position for Hathaway and Manak is untimely because, as the Association stated in the original charge, the Association became aware of Hathaway's involuntary transfer and the resulting demise of the shared contract position on April 9, 2002. However, in the amended charge and in the appeal, the Association clarified that fact and emphasized that

while it knew of the involuntary transfer in April 2002, it did not actually learn of the elimination of the shared contract position until August 28, 2002. The Board must assume that the essential facts alleged in the charge are true. (Golden Plains Unified School District (2002) PERB Decision No. 1489 (Golden Plains) at p. 6, citing San Juan Unified School District (1977) EERB Decision No. 12[3].) Disputed facts must be resolved under the Board's hearing process. (Golden Plains, at p. 6.) Therefore, for purposes of determining a prima facie case, the Board finds that the allegation concerning Hathaway's and Manak's shared position is timely.

In determining whether a party has violated EERA section 3543.5(c), PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. (Stockton Unified School District (1980) PERB Decision No. 143.) Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented before the employer notified the exclusive representative and gave it an opportunity to request negotiations. (Walnut Valley Unified School District (1981) PERB Decision No. 160; Grant.)

The Association contends that the elimination of the shared contract position without the consent of the affected teachers is a unilateral change from past practice. We agree with the Board agent that the Association has not alleged sufficient facts to establish a past practice.

PERB Regulation 32615(a)(5)[4] requires the charging party to provide "a clear and concise statement of the facts and conduct alleged to constitute an unfair practice." In this

[3]Prior to January 1978, PERB was known as the Educational Employment Relations Board or EERB.

[4]PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

case, the Association did not provide specific information establishing a past practice. The CBA provisions pertaining to shared contract positions are Article 10, which covers the pre-retirement work program and which does not apply to the positions at issue in the instant matter, and Article 8, section 8.7, which establishes a joint committee to develop guidelines for K-6 shared contracts. This latter provision is the only CBA section identified by the Association that applies to voluntary reduced-time shared contract positions. The Association has not provided information of instances in which the District has eliminated other voluntary reduced-time shared contract positions after obtaining the consent of the impacted teachers. In fact, the existence of section 8.7 appears to negate any showing of agreement between the parties on this issue because the parties have agreed only to set up a committee to create guidelines for addressing the mechanics for these positions. We thus find that the Association has not established a past practice for which elimination of these positions requires the consent of the affected teachers. For this reason alone, we find that the Association has not stated a prima facie case of unilateral change and therefore affirm the Board agent's dismissal.[5]

ORDER

The unfair practice charge in Case No. SA-CE-2149-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member Neima joined in this Decision.

[5]The Association and the District dispute whether the elimination of these positions is a matter within the scope of representation. Since we have already found that the Association has failed to allege a past practice, we decline to address the scope issue at this time.