STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, CHAPTER 32,

Charging Party,

v.

BELLFLOWER UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. LA-CE-5955-E

PERB Decision No. 2544

December 15, 2017

Appearance: Law Offices of Eric Bathen by Eric Bathen, Attorney, for Bellflower Unified School District.

Before Gregersen, Chair; Banks and Winslow, Members.

DECISION

BANKS, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions by the Bellflower Unified School District (District) to the proposed decision (attached) of a PERB administrative law judge (ALJ). The proposed decision concluded that the District had acted in derogation of its duty to meet and negotiate in good faith with the California School Employees Association, Chapter 32 (CSEA), which is the exclusive representative of the District's classified employees and to have committed various other unfair practices in violation of the Educational Employment Relations Act (EERA).[1] Specifically, the District was found to have violated EERA section 3543.5, subdivision (c), by: (1) failing and refusing to respond to CSEA's requests for necessary and relevant information regarding the District's plans to contract out work historically performed by the

---

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

Here, the District had not yet finalized its contracting-out plans at the time of its February 27 2014 Notice. But I nevertheless find the futility line of cases instructive to the extent that they recognize that it is fruitless to require a union to demand negotiations from an unwilling employer. The February 27, 2014 Notice specifically references the District's perceived authority under CBA Article XV, Section A, to contract out unit work subject only to a "meet and consult" requirement. By citing to that section, the District communicated to CSEA that it did not intend on negotiating over its subcontracting plans and that any discussions between the parties on the subject would not constitute formal bargaining. District counsel Bathen confirmed that position in an e-mail from July 29, 2014, where the he informed CSEA president St. Clair that the Article XV of the expired CBA authorized the District to contract out unit work without negotiations. Bathen reiterated that position in a letter dated August 12, 2014, informing CSEA, that the District was only obligated to "meet and consult" over the subcontracting plans.[9] Because the District consistently took the position that it could contract out bus driver work without negotiations, I conclude that any demand to negotiate

[9] Bathen was the District's counsel on this matter. Delgado explained that he referred communications from CSEA to Bathen for response. As such, Bathen was acting as an agent of the District and the statements made in his e-mails qualify as agency admissions. (*Santa Ana Unified School District* (2013) PERB Decision No. 2332, pp. 9-11; *Gonzales Union High School District* (1993) PERB Decision No. 1006, proposed dec., p. 15.)

over the change would have been a meaningless exercise.[10] Under the circumstances, CSEA was not required to demand negotiations.[11]

(b) Adequacy of CSEA's Statements Concerning Negotiations

I also conclude that CSEA had adequately informed the District that it desired negotiations over any proposed subcontracting of bus driver work. A bargaining demand does not require any specific format or language, so long as the union adequately demonstrates a desire to negotiate a matter within the scope of representation. (*Sylvan Union Elementary School District* (1992) PERB Decision No. 919, pp. 11-12, citing *Newman-Crows Landing Unified School District* (1982) PERB Decision No. 223, pp. 7-8.) Mere protests or "heated discussions" about a planned change are insufficient to notify the employer that the union desires bargaining. (*Pasadena Area Community College District* (2011) PERB Decision No. 2218, proposed dec., pp. 5-6, citing *County of Riverside* (2010) PERB Decision No. 2097-M; *Santee Elementary School District* (2006) PERB Decision No. 1822, p. 5, citing *Delano Joint Union High School District* (1983) PERB Decision No. 307.)

---

[10] The District argues in its closing brief that the "meet and consult" language in the expired CBA "obviously" means that it had an obligation to negotiate over the contracting out decision. I reject that argument as contrary to both the position it took in its communications directly with CSEA and existing interpretations of EERA. (*Allan Hancock Community College District* (1989) PERB Decision No. 768, warning ltr., p. 5; see also *El Centro Elementary School District* (2006) PERB Decision No. 1863, p. 3, citing *Eureka City School District* (1992) PERB Decision No. 955.)

[11] But see *Metropolitan Water District of Southern California* (2009) PERB Decision No. 2055-M, where the Board rejected a union's argument that an employer's statement that it was willing to "meet and discuss" a policy change implied that it was unwilling to *meet and confer* over that change. The Board reasoned that the employer was under no obligation to invite bargaining. Here, by contrast, the District affirmatively communicated its unwillingness to engage in formal negotiations due to the authority it believed it possessed under the expired CBA.

In this case, upon receiving the February 27, 2014 Notice, CSEA requested proof of cost-overruns and employee misconduct in the Transportation Department. Delgado also acknowledged in his testimony that CSEA requested cost information and that CSEA's chief negotiator at the time, Lockwood, said that "how could we give you a proposal unless we know what it [would] cost?" The District admitted to never providing any information in response to either request. Delgado also testified that CSEA's negotiators committed to putting forward a proposal on the contracting issue in or around April 2014. The District argues that CSEA never followed through with an actual proposal. Even if the District were correct, its admission that CSEA expressed interest in submitting a proposal is sufficient to indicate a desire to engage in bargaining over the subcontracting issue.

Furthermore, witnesses from both parties stated that CSEA offered alternatives that could have addressed the District's asserted transportation concerns and possibility eliminated or reduced the need to use a private contractor or layoff bus drivers. Among the alternatives explored were redrawing or increasing the number of bus routes to improve effectiveness, adding job duties for bus drivers to reduce the need to go elsewhere for those services, adding tracking equipment, and changing current disciplinary practices. On June 23, 2014, CSEA gave its clearest indication of its desire to negotiate this matter, proposing in successor CBA bargaining that the District not contract out any bargaining unit work for the life of the new contract.[12] Although the District may not have agreed with CSEA's proposed solutions, the

[12] At hearing the District highlighted the fact that CSEA later withdrew this proposal before the parties reached their tentative agreement in October 2014. The District also notes that, under the tentative agreement, the District retains its authority to contract out under Articles III and XV. It appears to argue that by reaching the tentative agreement, CSEA implicitly acquiesced to the contracting decisions made in this case. I reject that argument for at least two reasons. First, waivers must be express, not implicit, and the tentative agreement made no mention of resolving the instant dispute. Second, the term of the new agreement was

10. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board (PERB or Board), or the General Counsel's designee. Respondent shall provide reports, in writing, as directed by the General Counsel or his/her designee. All reports regarding compliance with this Order shall be concurrently served on CSEA.

Right to Appeal

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Public Employment Relations Board (PERB or Board) itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(916) 322-8231
FAX: (916) 327-7960
E-FILE: PERBe-file.Appeals@perb.ca.gov

In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code Regs., tit. 8, § 32300.)

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet or received by electronic mail before the close of business, which meets the requirements of PERB Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service,

in the U.S. mail. (Cal. Code Regs., tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090, 32091 and 32130.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, §§ 32300, 32305, 32140, and 32135, subd. (c).