

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



OAKDALE UNION ELEMENTARY SCHOOL DISTRICT)
Employer,) Case No. S-R-23
and) PERB Order No. Ad-46
OAKDALE UNION ELEMENTARY TEACHERS) Administrative Appeal
ASSOCIATION) September 13, 1978
Employee Organization,)
APPELLANT.)
_____)

Appearances: Myron Lieberman, Representative for Oakdale Union Elementary School District; and Mark S. Lewis, President of Oakdale Union Elementary Teachers Association.

Before Gluck, Chairperson; Gonzales and Cossack Twohey, Members.

DECISION

The Oakdale Union Elementary Teachers Association (hereafter Association) has appealed the Sacramento regional director's decision to deny its request for post-factfinding mediation between the Association and the Oakdale Union Elementary School District (hereafter District). The Public Employment Relations Board (hereafter Board) affirms the regional director's decision.

FACTS

The District voluntarily recognized the Association on July 1, 1976, and the parties negotiated an initial contract which expired June 30, 1977. They began negotiating for a new

contract on May 5, 1977, but after over 30 hours of negotiation, were unable to reach agreement. On October 11, 1977, the parties requested the regional director to declare an impasse and appoint a mediator pursuant to Educational Employment Relations Act (hereafter EERA) section 3548¹.

The mediator met with the District and the Association until February 22, 1978, at which time he recommended factfinding pursuant to section 3548.1². The disputed issues submitted to the factfinding panel were salary, duration of agreement, grievance procedure, no strike clause, leaves of

¹The EERA is codified at Gov. Code sec. 3540 et seq. All statutory references are to the Government Code unless otherwise indicated.

Sec. 3548 provides in pertinent part:

Either a public school employer or the exclusive representative may declare that an impasse has been reached between the parties in negotiations over matters within the scope of representation and may request the board to appoint a mediator for the purpose of assisting them in reconciling their differences and resolving the controversy on terms which are mutually acceptable. If the board determines that an impasse exists, it shall, in no event later than five working days after the receipt of a request, appoint a mediator in accordance with such rules as it shall prescribe....

²Sec. 3548.1 provides:

If the mediator is unable to effect settlement of the controversy within 15 days after his appointment and the mediator declares that factfinding is appropriate to the resolution of the impasse, either party may, by written notification to the other, request that their differences be submitted to a factfinding panel. Within five days

absence, hours, class size, adjunct duties, mileage, the inclusion of a Jarvis-Gann clause, negotiation procedures, retroactivity, placement on salary schedule, and school calendar. The factfinding panel held hearings on April 24 and 25, 1978, and issued its report on June 5, 1978. Afterwards, two fruitless negotiation sessions were held. The Association then asked the mediator to return for post-factfinding mediation.³ When the mediator contacted the District about continuing mediation, the District said that it did not wish to participate in any further mediation.

The Association, after being notified by the mediator of the District's position, requested the Sacramento regional office to order mediation. A Board agent discussed the situation in Oakdale with the original mediator, the chairperson of the factfinding panel, the District superintendent, the president of the Association, and a

after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The board shall, within five days after such selection, select a chairman of the factfinding panel. The chairman designated by the board shall not, without the consent of both parties, be the same person who served as mediator pursuant to Section 3548.

³The EERA provides for post-factfinding mediation in sec. 3548.4, which states:

Nothing in this article shall be construed to prohibit the mediator appointed pursuant to Section 3548 from continuing mediation efforts on the basis of the findings of fact and recommended terms of settlement made pursuant to Section 3548.3.

California Teachers Association field representative. Based on the information gathered from these discussions, the regional director denied post-factfinding mediation on June 28, 1978.

DISCUSSION

Section 3548.1⁴ does not mandate post-factfinding mediation; it merely authorizes its occurrence. A party, after participating in good faith in mandatory mediation and factfinding, may not wish to continue mediation. In that case, when the other party requests further mediation, the Board should carefully examine the situation in order to determine whether post-factfinding mediation would be fruitful in the face of expressed resistance from one of the parties.

Mediation cannot require unwilling parties to reach agreement; it can help them to do so by clarifying issues and enhancing communication. After factfinding, mediation may no longer be useful since the issues have been clarified, and each party knows where the other stands. To impose mediation on a resisting party in that situation could be a waste of time and resources. In addition, it would allow the party seeking mediation to prolong impasse procedures indefinitely. At some point, a district or an employee organization should be able to call a halt to fruitless post-factfinding efforts.

A determination of whether further mediation would be productive requires knowledge of the negotiating history of the

⁴Ante, fn. 3.

parties and their current relationship. This knowledge is best available to the regional directors and their staffs, who are in direct contact with both the parties and involved neutrals. The Board therefore finds that the decision as to whether post-factfinding mediation would be beneficial to the parties in helping them reach agreement is best left to the discretion of the regional director after satisfactory investigation.

In this case, the regional office staff made a careful investigation, discussing the circumstances with both the parties and the neutrals. From the discussions, the regional director decided that further mediation would neither help the parties' relationship nor further their reaching agreement. He therefore denied post-factfinding mediation. The Board affirms that decision.

However, the Board expressly disapproves that part of the regional director's rationale in which he states that "...one of the factors to be considered is the question of retroactivity for certificated salaries which must be answered by July 1, 1978..." The Board does not decide whether or not retroactive salary increases must be granted during the fiscal year. Since retroactivity was not the only subject the parties had not yet resolved, the Board finds the legal status of retroactivity irrelevant to a determination of whether post-factfinding mediation would be productive. The real issue is whether such mediation will help the parties reach agreement. The regional director determined that it would not, and the Board affirms this determination as within his discretion.

ORDER

The Public Employment Relations Board ORDERS that:

The Sacramento regional director's decision to deny post-factfinding mediation between the Oakdale Union Elementary School District and the Oakdale Union Elementary Teachers Association is affirmed.

~~By: Raymond J. Gonzales, Member~~

~~Harry Gluck, Chairperson~~

~~Jerilou Cossack Twohey, Member~~

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
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(916) 322-3198



CERTIFIED MAIL

June 28, 1978

Mr. Mark S. Lewis
President
Oakdale Union Elementary ~~School District~~ *Teachers Assn*
1314 Muirswood Way
Modesto, CA 95355

Dear Mr. Lewis:

Based upon the circumstances surrounding the investigation of the negotiations in the Oakdale Union Elementary School District, post-factfinding mediation is denied. Since one of the factors to be considered is the question of retro-activity for certificated salaries which must be answered by July 1, 1978, we find that post-factfinding mediation would not be beneficial for the negotiating process in the Oakdale Union Elementary School District..

This position was reached from consultation with the previously appointed conciliator, chairperson of the factfinding panel, district superintendent, local president of the teacher's organization, and California Teacher's Association field representative.

Notice is also given that any party may obtain a review of this action by filing an appeal with Mr. Charles Cole, Executive Director, 923 - 12th Street, Suite 201, Sacramento, CA 95814. The appeal must be filed within ten calendar days ending on July 8, 1978. The appeal should contain a complete statement setting forth the facts and reasoning upon which the appeal is based. Copies of any appeal must be served upon all other parties to the action.

Sincerely,

WILLIAM E. BROWN
Regional Director

By _____

Sacramento Regional Representative

WEB/JB/dc