STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

UNITED PROFESSORS OF MARIN, AFT LOCAL 1610, AFL-CIO, Employee Organization, APPELLANT, and MARIN COMMUNITY COLLEGE DISTRICT, Employer.	Case No. SF-M-640 (R-140) PERB Order No. Ad-126 Administrative Appeal April 21, 1982

Appearances: Michael E. Brailoff, Executive Council Member for the United Professors of Marin, AFT Local 1610, AFL-CIO; Robert W. Stroup, Attorney (Paterson & Taggart) for the Marin Community College District.

Before Gluck, Chairperson; Moore and Tovar, Members.

DECISION AND ORDER

The United Professors of Marin, AFT Local 1610, AFL-CIO (UPM) appeals a determination that impasse existed between UPM and the Marin Community College District (District) and the appointment of a mediator by an agent of the Public Employment Relations Board (PERB).

This case highlights certain problems encountered by the Board in applying the provisions of section 3548 of the Educational Employment Relations Act (EERA).[1]

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[1]The EERA is codified at Government code section 3540, et seq. All statutory references in this decision are to the Government Code, unless otherwise noted.

This section requires the Board to determine the existence of impasse within five days of the receipt of a request for the appointment of a mediator. The definition of "impasse" contained in section 3540.1(f)[2] contemplates that the parties attempted in good faith to reach agreement before arriving at that point where the differences in their positions make further negotiations futile and justify an affirmative finding of impasse.

The immediate problem lies in determining the presence of good faith. Often, and especially where the breakdown is not the result of a disagreement on scope, the matter of good faith is entirely subjective, a question of the party's state of mind which can only be discovered by examination of a considerable body of circumstantial evidence. Typically, this issue is resolved in an unfair practice proceeding by reviewing the totality of the party's conduct, and then only after a full evidentiary hearing. To make such a determination on the basis of the necessarily limited investigation that follows a request

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[2]Section 3540.1(f) states:

> (f) "Impasse" means that the parties to a dispute over matters within the scope of representation have reached a point in meeting and negotiating at which their differences in positions are so substantial or prolonged that future meetings would be futile.

for the appointment of a mediator, particularly within the Act's time constraints, is a different matter altogether. To assist the investigator, PERB has adopted a rule which sets forth those factors to be searched out and analyzed.[3] Unfortunately, the problem, though mitigated, persists.

Here, the investigation reveals that the parties met on 17 occasions for a total of 85 hours, figures which would normally be indicative of serious negotiations. Nevertheless, UPM contends that the District failed to negotiate in good faith. The District points to 15 items on which it claims agreement was reached. Yet, it appears that these may be but subdivisions of one of the 16 different subjects on the table. The Board agent also noted that there was an exchange of proposals on some items. The evidence as to "good faith" is hardly conclusive.

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[3]PERB rules are codified at California Administrative Code, title 8, section 31000, et seq.

Section 36030(c) reads:

> In reaching a determination about the existence of an impasse, the Regional Director may consider the number and length of negotiating sessions between the parties, the time period over which the negotiations have occurred, the extent to which the parties have made counter-proposals to each other, the extent to which the parties have reached tentative agreement on issues during the negotiations, the extent to which unresolved issues remain, and other relevant data.

But the search for good faith is only one aspect of the Board's obligation to balance the Act's competing interests in applying section 3548. On the one hand, it is virtually certain that the Legislature intended that contract settlement be reached as expeditiously as possible and that stalemates not be permitted to fester into harsh confrontations.[4] PERB rule

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[4]Section 3548 provides, in pertinent part:

> . . . 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. . . .

Section 3548.1(a) provides in part:

> (a) 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 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 chairperson of the factfinding panel. . . .

Section 3548.2 provides, in pertinent part:

> The [factfinding] panel shall, within 10 days after its appointment, meet with the parties . . .

Section 3548.3(a) requires the panel to submit its recommendations within 30 days after its appointment unless the parties otherwise agree to a longer period and further provides

36040(b) recognizes these expectations by providing that mediation shall not be stayed pending appeals from a determination of impasse.

On the other hand, there is also the need to discourage recalcitrant parties from evading, for whatever reasons, their good-faith negotiating obligations by escaping into impasse proceedings virtually on demand.[5] PERB would subvert this purpose of the Act if it were to relax its investigative standards to the point where the appointment of a mediator was little more than an acknowledgment of an absence of meaningful negotiations.

It is in the course of balancing these competing purposes that we find the Board agent's determination to be appropriate. Returning the parties to the table cannot be expected to expedite the settlement of this dispute. It is unlikely that the stalemate reached after 17 sessions will suddenly dissolve. It is more likely that the parties' resistance would intensify and delay even further the ultimate

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that the employer make public the recommendations within 10 days after their receipt.

See also San Diego Teachers Association v. Superior Court (1979) 34 Cal.3d 1 [154 Cal.Rptr. 893]

> . . . the impasse procedures almost certainly were included in the EERA for the purpose of heading-off strikes. (p. 8).

[5]See Mt. San Antonio Community College District (12/30/81) PERB Order No. Ad-124.

reconciliation of their differences, if not make such reconciliation impossible. It is also to be hoped, though it is not certain, that use of impasse procedures will be beneficial.

The information elicited by the investigation does not justify a finding that the District probably refused to negotiate in good faith and sought premature resort to mediation.

Appeal DENIED.

PER CURIAM