

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



TEMPLE CITY EDUCATION ASSOCIATION,)
CTA/NEA,)
Charging Party,) Case Nos. LA-CE-2789
v.) LA-CE-2800
TEMPLE CITY UNIFIED SCHOOL DISTRICT,) Administrative Appeal
Respondent.) PERB Order No. Ad-190
July 12, 1989

Appearances: Charles R. Gustafson, Attorney, California Teachers Association, for the Temple City Education Association, CTA/NEA; Wagner, Sisneros & Wagner by John J. Wagner, Attorney, for the Temple City Unified School District.

Before Craib, Shank and Camilli, Members.

DECISION

SHANK, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Temple City Unified School District (District) of the administrative law judge's (ALJ) denial of the District's motion to dismiss Temple City Education Association, CTA/NEA's (Association) amendment to the complaint and to defer to binding arbitration. The District filed a motion to stay the hearing on the remainder of the complaint pending the decision of the Board.

The ALJ denied the motion, having found that the grievance procedure does not "cover the matter at issue," and continued the matter to allow the District the opportunity to appeal the ruling directly to the Board. For the reasons set forth below, we affirm the ALJ's denial of the motion to dismiss and deny the request for stay.

FACTS

The District and the Association entered into a collective bargaining agreement (Agreement) in October, 1986 which defined the terms and conditions of employment of the unit members for the period September 1, 1986 to June 30, 1989. Article XV¹ of

¹Article XV states:

1. The District agrees to provide each eligible unit member with fully paid health and welfare benefits during the term of this Agreement. The fully paid coverages include the following:

a) the unit member's participation in one of the medical plans offered by the District and described in Appendix A of this Agreement;

b) the unit member's participation in one of the dental plans offered by the District and described in Appendix A of this Agreement;

c) the unit member's participation in the vision plan offered by the District and described in Appendix A of this Agreement;

d) the unit member's participation in a basic term life insurance plan offered by the District and described in Appendix A of this Agreement.

2. The District's contribution toward each unit members health and welfare benefits shall be the equivalent of the total cost of the options marked with an asterisk on Appendix A. Unit members who choose a set of options which exceed the total cost of the options marked with an asterisk must sign a payroll deduction for the difference. Unit members who choose a set of options which cost less than the total cost of the options marked with an asterisk may apply the unused fund at the teachers discretion for health

the Agreement describes the District's contribution and obligations and the unit members' rights regarding various health and welfare benefits. During the 1986-87 school year the cost of the benefit plan was \$2,700 per unit member. During the 1987-88 school year, the cost of that same plan was \$3,000.

On or about June 27, 1988, the parties began meeting and negotiating and exchanged proposals for health and welfare benefits for the 1988-89 school year. On or about August 29, 1988, the parties mutually agreed that they were at impasse and petitioned PERB to appoint a mediator.

On October 6 and November 7, 1988, the Association filed unfair practice charges alleging that the District: (1) refused to bargain in good faith; (2) refused to participate in good faith in the impasse procedure; (3) imposed illegal reprisals against employees; and (4) illegally denied the Association rights in violation of section 3543.5(a), (b), (c), and (e) of the Educational Employment Relations Act (EERA).²

and welfare purposes, as listed in Appendix A.

²EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3543.5 provides, in pertinent part:

It shall be unlawful for a public school employer to:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

Specifically, the charges allege that on or about September 1, 1988, the District posted a sign-up sheet setting forth the fringe benefit options for unit members for the 1988-89 school year and indicated that the District's contribution would be limited to the same \$3,000 total payment contribution as the previous year. The charges further allege that on or about September 10, 1988, approximately 50 unit members filed grievances with the District alleging the impropriety of the District's limit on fringe benefit contributions. The Association moved the single grievance of its president, Janice Murasko, to arbitration. The arbitrator held that the arbitrable issues were limited to the Murasko grievance.

The Association, by letter dated January 12, 1989, requested that the section 3543.5(c) allegation be deleted. That portion of the charge was withdrawn without prejudice by the regional attorney and a complaint was issued on January 17, 1989. The charges were consolidated on January 20, 1989.

The complaint alleged that certain conduct that occurred during the impasse procedures violated section 3543.5(e), and,

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

.....

(e) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

derivatively, (a) and (b). Specifically, the complaint alleges that: (1) the District stated that it would not negotiate with the Association nor make any financial commitments regarding issues in negotiations until grievances filed by bargaining unit members concerning reductions in fringe benefit contributions were resolved through the grievance procedure; and (2) the District sent to all unit members who had not filed a grievance a letter which stated that the unit members did not have to file one since they would receive the same benefits as those who did.

The Association filed a motion to amend its charge on March 17, 1989, alleging that the District's distribution of the fringe benefit sign-up sheet on September 1, 1988 constituted a unilateral change, as well as an attempt to bypass the Association. On April 25, 1989, the ALJ granted that portion of Association's motion with regard to the alleged unilateral change and denied that portion alleging bypass for failure to state a prima facie case. The District did not file a reply to the motion.

On April 26, 1989, a hearing was held and the ALJ served the parties with a copy of the amended complaint. The ALJ granted the District's request for a continuance to allow it to prepare a defense and respond to the amendment. On May 2, 1989, the District filed a motion to dismiss the amendment to the complaint and alleged that the amendment is inappropriate because the dispute in question is subject to final and binding arbitration. The ALJ denied the District's motion at a hearing held on May 18,

1989. The ALJ found that the Murasko grievance did not "cover the matter at issue" and continued the matter to allow the Association the opportunity to appeal the ALJ's ruling directly to the Board.

On June 6, 1989, the Association appealed the ALJ's denial of its motion to dismiss the amendment and moved to stay the trial on the complaint in its entirety, pending a decision of the Board on this appeal. The District also stated that the amendment was filed more than six months after the alleged conduct took place and is therefore barred by the provisions of section 3541.5(a).³

DISCUSSION

Deferral

Although the District correctly asserts that PERB has no jurisdiction to hear a matter which is arguably prohibited by the

³Section 3541.5 states in relevant part:

The initial determination as to whether the charges of unfair practices are justified, and, if so, what remedy is necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board. Procedures for investigating, hearing, and deciding these cases shall be devised and promulgated by the board and shall include all of the following:

(a) Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not do either of the following: (1) issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge; . . .

parties' agreement when the Agreement contains binding arbitration machinery (Lake Elsinore School District (1988) PERB Decision No. 646), we agree with the ALJ that the grievance machinery, in this instance, does not cover the matter at issue. According to the District, the subject of the amended complaint involves conduct arguably prohibited by the Agreement. The District further asserts that the Agreement has grievance machinery ending in binding arbitration which is now being exercised by the parties.

Article III of the Agreement outlines the grievance procedures. Section 1 relates to individual unit members and states:

A grievance is an allegation by a unit member that there has been a violation, misinterpretation, misapplication, or non-application of a provision of this Agreement.

Article III, Section 2 relates to the Association and states:

The Association may file a grievance on its own behalf with respect to an alleged violation, misinterpretation, misapplication, or non-application of a provision of this Agreement which provides for Association rights.

(Emphasis added.)

The instant matter relates to conduct concerning health and welfare benefits. Article III, Section 2 of the Agreement specifically limits the Association to filing a grievance on its own behalf only in those instances where the Agreement provides for Association rights. Article XV of the Agreement describes health and welfare benefits of each unit member but does not

mention any rights on the part of the Association. Therefore, in this particular case, the Association has no right under the Agreement to file a grievance on its own behalf.

Furthermore, the conduct complained of in the proposed amendment relates to the issue of whether the Association was denied its right to represent its members by the alleged unilateral change, which is different from the issue raised by allegations in the Murasko grievance. The remedies afforded by the arbitrator will be limited to Murasko only and will not completely dispose of the issues raised by the proposed amendment. Therefore, the amendment does not "cover the matter at issue" under section 3541.5(a), and we affirm the ALJ's ruling on the deferral issue.

Statute of Limitations

The District appeals to the Board to overrule the ALJ's denial of its motion based, inter alia, on the fact that the amendment was filed more than six months after the alleged conduct took place and is, therefore, time-barred by section 3541.5.

The proposed amended charge was filed more than six months after the Association had knowledge of the District's conduct with regard to the alleged unilateral change. However, an exception to the limitations period set forth in section 3541.5(a) may be made where an amended charge is found to "relate back" to the original charge. (Gonzales Union High School

District (1984) PERB Decision No. 410; Burbank Unified School District (1986) PERB Decision No. 589.)

In Gonzales, the Board allowed an amendment because it simply added another legal theory based on the same set of facts contained in the original charge. The original charge alleged a unilateral change and the amendment alleged that the same conduct also constituted retaliation. In contrast, in Monrovia Unified School District (1984) PERB Decision No. 460 and Burbank Unified School District, supra, PERB Decision No. 589, the Board found that the proposed amendments did not "relate back" because they were not sufficiently related to or raised by the initial charge.

In the instant case, the initial charge states:

On or about September 1, 1988, the District began soliciting unit member sign-ups for their fringe benefit options for the 1988-89 school year. The sign-up sheet offered by the District at the time indicated that the District's contribution would be limited to \$300.00 tenthly or the same \$3,000.00 total payment contributed by the District during the previous school year. A \$3,000.00 limit is \$1,407.10 less than the amount required to pay for the benefit plans previously covered by the District's contribution and identified by an asterisk. . . .

The proposed amendment states:

On or about September 1, 1988, the District unilaterally changed its contribution from that required by the collective bargaining agreement (See Attachment A) by limiting its contribution to \$3,000.00 for the year. This unilateral action was reflected in a sign-up sheet distributed at that time to unit members indicating the District's contribution would be limited to \$300.00 tenthly, which is the same \$3,000.00 contributed during the previous year. This distribution of the sign-up sheet containing

the unilateral change constituted direct negotiations with unit members and an unlawful bypassing of the Association. The \$3,000.00 limit is \$1,407.10 less than the amount required to pay for the benefit plans previously covered by the District's contribution and identified by an asterisk. . . .

Although the District alleges that the amendment raises a new issue, we find that the initial charge and the proposed amendment both describe conduct by the District regarding limits on the District's contribution toward unit members' health and welfare benefits. The initial charge fails to indicate clearly the legal theory attached to the alleged conduct. The amended charge cites the same conduct, but labels it as a unilateral change. This case is similar to Gonzales, and requires the same result.

CONCLUSION

For the reasons stated above, we find that the grievance procedure does not cover the matter at issue and that the amendment is substantially related to the initial charge. Accordingly, we affirm the ALJ's denial of the District's motion to dismiss the amendment. Therefore, we find it unnecessary to grant District's request for stay.

ORDER

The Board DENIES the Request for Stay, AFFIRMS the denial of the motion to dismiss the amendment, and instructs the ALJ to

proceed with the hearing on the complaint in Case Nos. LA-CE-2789
and LA-CE-2800.

Members Craib and Camilli joined in this Decision.

