

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIPATRIA UNIFIED TEACHERS )  
ASSOCIATION, )  
 ) Case No. LA-CE-2792  
Charging Party, )  
 ) Administrative Appeal  
v. )  
 ) PERB Order No. Ad-193  
CALIPATRIA UNIFIED SCHOOL DISTRICT, )  
 ) September 15, 1989  
Respondent. )  
\_\_\_\_\_ )

Appearance: Littler, Mendelson, Fastiff & Tichy by Hector E. Salitrero, Attorney, for Calipatria Unified School District.

Before Hesse, Chairperson; Porter and Shank, Members.

DECISION

HESSE, Chairperson: This is before the Public Employment Relations Board (PERB or Board) on appeal by the Calipatria Unified School District (District) of the administrative law judge's (ALJ) denial of the District's motion to defer to arbitration the matters alleged in the complaint. The District also filed a motion to stay the hearing pending the Board's decision on the District's appeal.<sup>1</sup>

The ALJ denied the District's motion, having found that, while the collective bargaining agreement contained a binding arbitration provision, the provisions of the collective bargaining agreement did not cover the matter at issue. As an

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<sup>1</sup>On June 9, 1989, the Board, by its own motion, ordered that the hearing in the above-captioned case be stayed pending the Board's decision on the District's request for stay of hearing and appeal of the denial of a motion to dismiss the complaint and defer the unfair practice charge to final and binding arbitration. (Order No. Ad-186.)

additional basis for denying the motion to defer, the ALJ stated that, even if there were a provision in the collective bargaining agreement prohibiting the conduct alleged in the complaint, the grievance machinery did not cover the matter at issue because the Calipatria Unified Teachers Association (Association) does not have the power to file a grievance in its own name covering the allegations in the complaint. For the reasons set forth below, we affirm the ALJ's denial of the motion to defer and dissolve the stay of hearing granted by the Board on June 9, 1989.

FACTS

On October 7, 1988, the Association filed an unfair practice charge alleging that the District violated section 3543.5(b), (c), and (e) of the Educational Employment Relations Act (EERA)<sup>2</sup> by: (1) denying the Association rights guaranteed by EERA; (2) refusing to meet and negotiate in good faith; and (3) refusing to

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<sup>2</sup>EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3543 states, in pertinent part:

It shall be unlawful for a public school employer to:

.....

(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).

participate in good faith in the impasse procedures. On February 10, 1989, the regional attorney dismissed the section 3543.5(c) allegation that the District refused to negotiate in good faith, and, on that same date, issued a complaint alleging that the District failed and refused to participate in good faith in the impasse procedures in violation of section 3543.5(e), and, derivatively, section 3543.5(a) and (b). On March 2, 1989, the District filed its answer and a motion to defer to binding arbitration. In its motion, the District argues that the allegation in the complaint, that the District failed to participate in good faith in the impasse procedures, is also an allegation of the failure to meet and negotiate in good faith in violation of Article XXI<sup>3</sup> of the collective bargaining agreement.

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<sup>3</sup>The District and the Association were parties to a collective bargaining agreement effective 1986-87, which expired on June 30, 1987. Subsequently, the parties reached agreement to extend the collective bargaining agreement through June 30, 1988, and then reached agreement on a successor collective bargaining agreement. The collective bargaining agreements and extensions all contained identical provisions for final and binding arbitration (Article IV) and negotiation procedures (Article XXI).

Article XXI states:

Not later than the first Board meeting in February of the calendar year in which this Agreement expires, the Board shall meet and negotiate in good faith with the Association on negotiable items. Any agreement reached between the parties shall be reduced to writing and signed by them.

Either party may utilize the services of outside consultants to assist in the negotiations.

The motion was denied by the ALJ who concluded that, while Article XXI arguably prohibits the District from failing or refusing to meet and negotiate in good faith, there is no provision arguably proscribing the District's failure to participate in good faith in PERB's impasse procedures. Even if there were a provision in the collective bargaining agreement prohibiting the conduct alleged in the complaint, the ALJ found that the grievance machinery did not cover the matter at issue

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The Board and the Association may discharge their respective duties by means of authorized officers, individual representatives, or committees.

Negotiations shall take place at mutually agreeable times and places. Meetings, and any adjourned portions thereof, shall be held within a reasonable time after receipt of written requests, provided that there is no more than one scheduled meeting per week unless by mutual consent.

When given a specific request, the Board shall furnish the Association with two copies of all county and state required reports as soon as they are transmitted to the county or state, and copies of all budgetary and other information it produces that are requested by the Association to fulfill its role as the exclusive bargaining representative as soon as it becomes available.

The Association shall designate two (2) representatives who shall receive a reasonable amount of release time without loss of compensation to attend negotiations, one representative for the processing of grievances, and any others participating in the hearing.

because the Association does not have the power to file a grievance.<sup>4</sup>

On May 23, 1989, the District appealed the ALJ's denial of its motion to defer to arbitration and moved to stay the hearing pending a decision of the Board on its appeal. The District also requested that the Board stay the hearing pending the Board's

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<sup>4</sup>Article IV states, in pertinent part:

A. Definitions

1. A "grievance" is a formal written allegation by a bargaining unit member who has been adversely affected by a violation of the specific provisions of this Agreement. Actions to challenge or change the policies of the District as set forth in Board Policies or procedures adopted by the Superintendent or his designee must be undertaken under separate legal processes. Other matters for which a specific method of review is provided by law or by rules of the employer are not within the scope of this procedure
2. A "grievant" is a member of the unit.

C. Formal Levels

3. Step 3

- c. Any award of the arbitrator shall be advisory on the grievant, the Association and the District. The award of the arbitrator shall be binding on grievances concerning alleged violations occurring after July 1, 1985.

decision in Chula Vista City School District, Case No. LA-CE-2038, regarding whether an employee organization has the right to file a grievance.

DISCUSSION

In determining the distinction between the duty to meet and negotiate in good faith and the duty to participate in good faith in the impasse procedures, the statutory definitions of "impasse" and "meeting and negotiating" are helpful.

Section 3540.1 states, in pertinent part:

.....  
(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.

.....  
(h) "Meeting and negotiating" means meeting, conferring, negotiating, and discussing by the exclusive representative and the public school employer in a good faith effort to reach agreement on matters within the scope of representation and the execution, if requested by either party, of a written document incorporating any agreements reached, which document shall, when accepted by the exclusive representative and the public school employer, become binding upon both parties and, notwithstanding Section 3543.7, shall not be subject to subdivision 2 of Section 1667 of the Civil Code. The agreement may be for a period of not to exceed three years.

Significantly, there is no mention of "impasse" in the definition of "meeting and negotiating." The fact that section 3543.5 has two separate subdivisions for refusal or failure to

meet and negotiate in good faith and refusal to participate in good faith in the impasse procedures, along with separate definitions for "meeting and negotiating" and "impasse," indicates that section 3543.5(e) is a separate violation from section 3543.5(c). Additionally, the fact that EERA specifically sets forth the impasse procedures demonstrates that the impasse procedures are separate and distinct from the duty to meet and negotiate in good faith.

This conclusion is consistent with the court's analysis in Moreno Valley Unified School District v. Public Employment Relations Board (1983) 142 Cal.App.3d 191, where the court found that section 3543.5(c) and (e) constitutes separate unlawful practices. Specifically, the court stated:

The statutory scheme unmistakably comprehends that an impasse may be declared only when meeting and negotiating have come to an end. This is further borne out by the fact that failure to meet and negotiate in good faith, and failure to participate in good faith in the statutory impasse procedure, are made separate unlawful practices for both employers and employee organizations. If participation in the meeting and negotiating process included participating in the impasse procedure, sections 3543.5, subdivision (e) and 3543.6, subdivision (d) would be wholly superfluous.

(Id. at p. 202; emphasis in original.)

Clearly, the statute demonstrates that the refusal to participate in good faith in the impasse procedures is a separate unlawful practice.

As the Board finds that there is no deferral to arbitration pursuant to the collective bargaining agreement, the Board does

not need to address the issue of whether the Association has the statutory right to file a grievance. Consequently, the Board denies the District's request for stay of hearing pending the Board's decision in Chula Vista City School District, Case No. LA-CE-2038.

ORDER

The Board hereby DISSOLVES the order for stay (Order No. Ad-186), DENIES the request for stay pending Chula Vista City School District, Case No. LA-CE-2038, DENIES the appeal of the ALJ dismissal, and ORDERS the ALJ to schedule a hearing on the merits of the complaint in Case No. LA-CE-2792.

Members Porter and Shank joined in this Decision.