OVERRULED IN PART by Los Angeles Unified School District (2017) PERB Decision No. 2518, pp. 41-42

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

UNITED FACULTY OF CONTRA COSTA COMMUNITY COLLEGE DISTRICT,	)	
Charging Party,	)	Case No. SF-CE-1332
v.	)	PERB Decision No. 804
CONTRA COSTA COMMUNITY COLLEGE DISTRICT,	)	April 2, 1990
Respondent.	)	

Appearances: Van Bourg, Weinberg, Roger & Rosenfeld by Stewart Weinberg, Attorney, for United Faculty of Contra Costa Community College District; Atkinson, Andelson, Loya, Rudd & Romo by Paul Loya, Attorney, for Contra Costa Community College District.

Before Hesse, Chairperson; Craib, Shank and Camilli, Members.

DECISION

CRAIB, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal from a Board agent's dismissal of an unfair practice charge filed by the United Faculty of Contra Costa Community College District (United Faculty). United Faculty contends that the Contra Costa Community College District (District) violated the Educational Employment Relations Act (EERA or Act), section 3543.5, subdivisions (a), (b), and (c),[1] by refusing to negotiate over

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

> It shall be unlawful for a public school employer to:

the expenditure of staff development funds made available to the District as a result of Assembly Bill (AB) 1725. Relying on the Board's decision in Anaheim Union High School District (1981) PERB Decision No. 177, the Board agent dismissed the charge because he reasoned that the allocation of budget monies was outside the scope of representation.

FACTUAL BACKGROUND

In 1988, the Legislature passed AB 1725, a comprehensive community college reform bill, that provided for the allocation of additional funding from the state for new teacher salaries, and for implementing local staff development programs (now codified at Educ. Code sec. 87150-87154). Section 87153 provides:

> The authorized uses of funds allocated under this article shall include all of the following:
>
> (a) Improvement of teaching.
>
> (b) Maintenance of current academic and technical knowledge and skills.

> (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.
>
> (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.

(c) In-service training for vocational education and employment preparation programs.

(d) Retraining to meet changing institutional needs.

(e) Intersegmental exchange programs.

(f) Development of innovations in instructional and administrative techniques and program effectiveness.

(g) Computer and technological proficiency programs.

(h) Courses and training implementing affirmative action and upward mobility programs.

(i) Other activities determined to be related to educational and professional development pursuant to criteria established by the Board of Governors of the California Community Colleges, including, but not necessarily limited to, programs designed to develop self-esteem.

In the case before the Board, the District had been informed that it should expect to receive approximately $148,000 for staff development (presumably for the 1989-90 school year). In January 1989, in response to this potential increased funding, United Faculty presented a staff development proposal to the District. As described by the Board agent, that proposal included: (1) augmenting the faculty sabbatical leave fund for 1989-90 by $25,000; and (2) allocating at least 80 percent of the funds for faculty activities, including the establishment of campus faculty development committees (which would, inter alia, allocate the staff development funds under the provisions of AB 1725).

Neither the proposal, nor any further description of the proposal, is provided in the record before the Board.

According to the charge, when presented with the proposal, the District initially responded by asking if United Faculty was formally requesting to reopen negotiations pursuant to the parties' collective bargaining agreement.[2] The charge further alleges that the District indicated that, while it did not agree that the development of a staff development plan was negotiable, it would "sunshine" United Faculty's proposal as part of United Faculty's reopener. United Faculty declined to use the proposal as a reopener because it contended that the proposal did not relate to any matter currently within the contract and demanded that the District negotiate the proposal separately. Subsequently, the District allegedly told United Faculty that it would not "agree" to any of the proposals even as a reopener.

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[2]Sections 24.2. and 24.2.1. of the collective bargaining agreement provide:

> 24.2. It is further agreed either party may reopen this Agreement for purposes of negotiations, once annually, beginning not later than sixty (60) calendar days from receipt of written demands and contract changes, after January 1 of each of the years 1989 and 1990.
>
> 24.2.1. Such reopener, if demanded, shall be limited to the specific matter of salary, of fringe benefits (insurance), and to the specific individual issues within the scope of bargaining as follows: each party will be allowed two (2) reopeners on issues beyond the articles under study during the duration of this agreement. Issues under study include Article 7, 8, 11, and 17 referred to appropriate committees.

Finally, at a March 13, 1989 meeting, the District allegedly stated that "staff development, except for sabbatical leaves, was outside the scope of bargaining; that it had not been presented as a reopener, and that [the District] did not like the proposal." While the charge alleges the District represented that it intended to act immediately to use the staff development funds, United Faculty has alleged no facts that the District has implemented any staff development plan.

Based on these facts, United Faculty alleged that the District has refused to negotiate United Faculty's proposal for staff development. United Faculty contended that, by requiring it to use one of its limited reopeners, the District effectively renounced its obligation to negotiate because no current provision in the contract addressed staff development. Furthermore, United Faculty argued that the contract could not have addressed the issue because, as new legislation, the requirements of AB 1725 for staff development were unknown at the time the contract was negotiated. United Faculty also contended that its staff development proposal was separately negotiable because it is within the scope of bargaining and AB 1725 funds are specifically designated for staff development.

THE BOARD AGENT'S ANALYSIS

The Board agent defined the threshold issue as whether United Faculty's proposal was within the scope of representation. He interpreted the proposal broadly as a proposal for the allocation of funds. After deciding that "the allocation of

funds" was not an enumerated subject in section 3543.2, subdivision (a)[3] of the Act, which defines scope of representation, the Board agent applied the Anaheim test. (Anaheim Union High School District, supra; PERB Decision No. 177.) In Anaheim, the Board held that a matter is within scope if: (1) it is logically and reasonably related to hours, wages or an enumerated term and condition of employment; (2) the subject is of such concern to both management and employees that conflict is likely to occur and the mediatory influence of collective negotiations is the appropriate means of resolving the conflict; and (3) the employer's obligation to negotiate would not significantly abridge the employer's freedom to exercise those managerial prerogatives (including matters of fundamental policy) essential to the achievement of the employer's mission.

The Board agent concluded that

> [r]equiring negotiations on how the employer allocates funds in the budget would

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[3]Section 3543.2, subdivision (a) provides in pertinent part:

> The scope of representation shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment. "Terms and conditions of employment" mean health and welfare benefits as defined by Section 53200, leave, transfer and reassignment policies, safety conditions of employment, class size, procedures to be used for the evaluation of employees, organizational security pursuant to Section 3546, procedures for processing grievances pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8, and the layoff of probationary certificated school district employees, pursuant to Section 44959.5 of the Education Code. . . .

> significantly abridge its freedom to exercise its essential managerial prerogatives. Therefore, the subject fails to meet the third prong of the Anaheim test. . . .

DISCUSSION

Although the Board agent correctly determined that the threshold question was whether the subject of the proposal was within the scope of representation, he improperly defined the subject of the proposal as "the allocation of funds." In fact, the subject of the proposal is staff development.[4] Thus, in order to determine whether the charge states a prima facie case under section 3543.5, subdivisions (a), (b), or (c), we must determine whether United Faculty alleged facts sufficient to show that its staff development proposal was at least arguably negotiable and, if so, that the District breached its obligation to negotiate.

Staff development, as such, is not one of the enumerated subjects in section 3543.2, subdivision (a). The Board has, however, addressed the issue of whether training, a type of staff development, is negotiable. In Poway Unified School District (1988) PERB Decision No. 680, the Board rejected the argument that all inservice training is negotiable. The Board noted that there was no evidence that the training in question impacted on or affected hours in any way because it was nonmandatory and did

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[4]Another way to look at the problem is to determine whether United Faculty would have been able to negotiate staff development absent the Legislature's specific allocation of funds. The source of the revenue is not important; the subject matter of the proposal is the key. (Cf. Lincoln Unified School District (1984) PERB Decision No. 465, at pp. 2-3.)

not require preparation time or duty-free time to meet professional development requirements. The Board found that there was "not even a tenuous connection" to any enumerated subject. (Id. at pp. 13-14.) The Board indicated, however, that since training was not an enumerated subject under section 3543.2 and the meaning of the term "training" is not always clear, the negotiability of training should be determined by PERB on a case-by-case basis. (Id. at p. 12.)

Thus, under the approach adopted by the Board in Poway, we must examine the facts as presented to the Board. In this case, United Faculty's proposal, as paraphrased in the warning letter, is not sufficiently detailed to determine any relationship to hours, wages, or enumerated terms and conditions of employment. (See Anaheim Unified School District, supra. PERB Decision No. 177.) An ultimate determination as to the subject proposal's negotiability is not, however, crucial to the resolution of this case. Even assuming, arguendo, that United Faculty could establish that its proposal is within the scope of bargaining, the District's obligation to bargain is still dependent upon the language of the parties' current collective bargaining agreement.[5]

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[5]We take official notice of the parties' current agreement filed with PERB pursuant to PERB Regulation 32120. (Antelope Valley Community College District (1979) PERB Decision No. 97, at p. 23.)

The parties' current agreement contains an expansive management rights/zipper clause embodied in Article 23, entitled Entire Agreement. That article provides:

> This contract shall supersede any and all existing or prior verbal or written rules, regulations, resolutions, and policy statements of the Board or management and all existing and prior customs, practices and alleged past practices of the Board or management in regard to the subject matter hereof which may be contrary or inconsistent with the terms hereof. However, either party may cite any such verbal or written rules, regulations, resolutions and policy statements of the Board or management and existing or prior customs, practices, and alleged past practices in an attempt to explain or clarify the provisions of this Agreement. This contract shall constitute the Board's entire policy with regard to employees covered hereby insofar as concerns wages, hours, and other matters which are the subject matter hereof. The adoption or institution of all past, existing and future policies, procedures, practices and customs shall be exclusively within the discretion of management, except to the extent that such action shall be contrary to the specific terms of this contract.

(Emphasis added.) In this final clause, the parties have conferred upon the District the exclusive right to determine any new policy or procedure which does not conflict with the terms of the contract. Thus, the District was only obligated to negotiate the subject of staff development if United Faculty chose to utilize one of its two reopeners under section 24.2.1 of the parties' agreement. United Faculty's charge alleges that the District initially agreed to sunshine United Faculty's proposal

as part of the parties' reopeners.[6] United Faculty, however, declined to use one of its reopeners, reasoning that, since the staff development funds were not available at the time the parties bargained, the parties did not contemplate that this subject would be a reopener. This argument must fail for the same reason the Board agent's analysis fails; the source of funds is not the appropriate focus for the analysis.

We must likewise reject United Faculty's argument that its refusal to use a reopener was justified because the proposal did not relate to any matter currently within the contract. In light of Article 23, United Faculty had no contractual mechanism, other than the reopener, to bring the District to the bargaining table. Since United Faculty was apparently unwilling to exercise its right to reopen the contract for the purpose of negotiating staff development, the District was within its rights to refuse to negotiate United Faculty's proposal.

CONCLUSION

Even assuming, arguendo, that United Faculty's staff development proposal was within the scope of representation, we must affirm the dismissal. The agreement of the parties grants to the District broad discretion to adopt new policies. If United Faculty wanted the opportunity to negotiate staff

[6]As indicated previously, the United Faculty also alleges that the District subsequently refused to "agree" to any of the proposals even as a reopener. Still later, the District allegedly stated that "staff development, except for sabbatical leaves, was outside the scope of bargaining, that it had not been presented as a reopener and that [the District] did not like the proposal." Although the charge is somewhat unclear, we conclude that the allegations reflect that United Faculty was unwilling to use a reopener for negotiating this issue.

development, it should have utilized one of its reopeners. Since the charge fails to allege adequately that the District refused to bargain the proposal as a reopener, the charge fails to state a prima facie case.

ORDER

Consistent with the discussion above, the unfair practice charge in Case No. SF-CE-1332 is hereby DISMISSED WITH PREJUDICE.

Chairperson Hesse, Members Shank and Camilli joined in this Decision.