



STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

EL DORADO UNION HIGH SCHOOL FACULTY
ASSOCIATION, CTA/NEA,

Charging Party,

v.

EL DORADO UNION HIGH SCHOOL DISTRICT,

Respondent.

Case No. S-CE-233

PERB Decision No. 382

April 23, 1984

Appearances; Kirsten L. Zerger, Attorney, for the El Dorado Union High School Faculty Association, CTA/NEA; Lee T. Paterson, Attorney (Paterson & Taggart) for the El Dorado Union High School District.

Before Hesse, Chairperson; Tovar and Jaeger, Members.

DECISION

JAEGER, Member: The El Dorado Union High School District (District) excepts to the hearing officer's finding that the District violated EERA subsections 3543.5(a) and (c). In reaching that decision, the hearing officer found that the unfair practice charge filed by the El Dorado Union High School Faculty Association (Association) was not barred by the statute of limitations as set forth in EERA subsection 3541.5(a)(1).1

¹Subsection 3541.5(a)(1) provides, in pertinent part:

.

(a) . . . the board shall not . . .

(1) issue a complaint in respect of any

Although the charge was filed after the six month period had run, the hearing officer concluded that the District's alleged unilateral action constituted a continuing violation which extended the limitations period, thereby making the charge timely filed.

For the reasons discussed below, we reverse the hearing officer's finding that the Association's charge was timely filed and, on that basis, dismiss the charge.²

FACTS

1. During March 1978, the District adopted a new policy without consulting the Association, requiring all new teachers hired by the District to sign an addendum to their teaching contracts in which they would agree to coach at least two school sports teams during the school year.

2. On September 5, 1978, the District school board met and approved the hiring of several new employees, with the "previously agreed to statement on coaching" to be added to the contracts of two of the new teachers. The president of the Association was present at the meeting. He testified that he

charge based upon an alleged unfair
practice occurring more than six months
prior to the filing of the charge; . . .

2since we dismiss the charge on statute of limitations grounds, we need not reach the substantive issues underlying the Association's allegations.

had no recollection of the addenda being specifically addressed by the Board.

3. Some time during the first two weeks of October 1978, some members of the Association board of directors learned of the District's new policy.

4. On October 16, 1978, the Association board of directors met and discussed the addenda.

5. On October 23, 1978, Roy Fulmer, the Association's past president and a member of the Association board of directors, along with another board member, met with District Superintendent Herbert Hemington and Assistant Superintendent Arthur Cate. At the meeting, the two Association representatives asked that the addenda be removed from the contracts and destroyed. The District representatives stated their belief that the addenda were legal and were not a violation of the collective bargaining agreement.

6. On April 17, 1979, the Association filed an unfair practice charge against the District, alleging that the addenda constituted a violation of EERA subsections 3543.5(a), (b), and (d), section 3543, and subsection 3543.1(a).

The District filed an answer and motion to dismiss, contending that the charge was barred by the statute of limitations.

DISCUSSION

We find that this case is governed by San Dieguito Union

High School District (2/25/82) PERB Decision No. 194.3 In San Dieguito, supra, the employer unilaterally changed its teacher sign-out policy contrary to the provisions of a collective bargaining agreement. The Association filed its charge more than six months after the new policy was implemented, but claimed that the District's enforcement of the policy during the limitations period constituted a "continuing violation." The Board, following federal precedent, disagreed. See, e.g. Local Lodge 1424 v. NLRB (1960) 263 U.S. 411, 4 L.Ed2d 832 [45 LRRM 3213]; Continental Oil Co. (1971) 194 NLRB 126 [78 LRRM 1626]; Schorr Stern Food Corp. (1977) 227 NLRB 245 [94 LRRM 1331]; Cone Mills Corp. v. NLRB (4th Cir. 1979) 413 F.2d 445 [71 LRRM 2916].

Thus, the Board determined that a continuing violation would only be found where active conduct or grievances occurred within the limitations period that independently constituted an unfair practice. Local Lodge 1424 v. NLRB, supra. However, a continuing violation would not be found where the employer's conduct during the limitations period constituted an unfair practice only by its relation to the original offense. UAW v. NLRB (D.C. Cir. 1966) 363 F.2d 702 [62 LRRM 2361], Where the underlying theory of the charge is an alleged unilateral change occurring outside the limitations period, the employer must

³San Dieguito, supra, was issued subsequent to the hearing officer's proposed decision in this case.

engage in conduct during the limitations period "such as reimplementation or subsequent refusals to negotiate . . . [which] revive[s] the viability of the unfair practice." San Dieguito, supra at p. 7.

The situation in the instant case closely resembles that of San Dieguito. In March and September 1978, the District adopted and implemented the new teaching assignment policy. The Association here had actual notice of the District's action prior to October 16, 1978, when the limitations period began to run, and did not file its charge until April 17, 1979, more than six months later. The District's sole violation, if any, occurred when it implemented the new policy, and the limitations period began to run when the Association had notice thereof. Requiring new teachers to sign the addenda during the limitations period does not satisfy the requirement in San Dieguito that the employer's subsequent conduct constitute a "reimplementation" of the allegedly unlawful policy.

The Association did, however, meet with the District on October 23, 1978, during the limitations period, to discuss the addenda. At the meeting, the Association representatives contended that the addenda were a violation of the contract and asked that they be destroyed. The District representatives responded that in their opinion the addenda were legal, and would not be removed. This meeting was nothing more than a protest against the District's alleged unilateral change

followed by a District response that its conduct was lawful. This meeting cannot, therefore, be considered an independent refusal to negotiate within the meaning of San Dieguito, supra.

Since the District did not either reimplement the allegedly unlawful policy or independently refuse to negotiate about it during the limitations period, we conclude that the Association's charge is time barred.

ORDER

Based on the foregoing findings of fact and conclusions of law, the charges filed by the El Dorado Union High School Faculty Association against the El Dorado Union High School District in Case No. S-CE-233 are hereby DISMISSED.

Chairperson Hesse and Member Tovar joined in this Decision.