STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

PERRIS SECONDARY EDUCATORS ASSOCIATION, Charging Party,	)	Case No. LA-CE-2954
v.	)	PERB Decision No. 861
PERRIS UNION HIGH SCHOOL DISTRICT, Respondent.	)	December 20, 1990

Appearances: Rodney Hoopai, Negotiations Chairperson, for Perris Secondary Educators Association; Best, Best, & Krieger by Bradley E. Neufeld, Attorney, for Perris Union High School District.

Before Hesse, Chairperson; Shank and Camilli, Members.

DECISION AND ORDER

CAMILLI, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Perris Secondary Educators Association (PSEA or Association) of a Board agent's dismissal (attached hereto) of its charge that the Perris Union High School District (District) violated section 3543.5(b) and (c) of the Educational Employment Relations Act (EERA).[1] The

[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 provides, in pertinent part:

> It shall be unlawful for a public school employer to do any of the following:
>
> (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.

Association contends the District violated its duty to bargain in good faith when it refused to implement the recommendations of an insurance study committee. The Board agent dismissed the charge on the grounds that the agreement encompassing the parties' duty to form the committee and arrive at a recommendation did not require the District to adopt or implement the recommendation.[2]

On appeal, the Association requests that the Board:

> . . . persuant [sic] to EERA 3541.5 exercise its discretionary jurisdiction to review [the mediator's settlement proposal and letter of agreement] and to determine if this settlement is "repugnant to the purposes of this chapter."

The Association further alleges that its appeal is:

> . . .an amendment of the first charge and contains new supporting evidence as well as new charge allegations. PSEA simply states that good cause exists for the submission of new supporting evidence and new charges in that we hope to successfully state a prima facie case.

We have reviewed the regional attorney's dismissal and, finding it to be free of prejudicial error, adopt it as the Decision of the Board itself. With respect to the Association's request for review of the mediator's settlement and side letter of agreement, we note that EERA section 3541.5 provides no authority for the Board to review those agreements. The Association apparently misconstrues section 3541.5(a)(2)

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[2]However, even if the District was required to implement the recommendation, the Association's allegations, in this case, constitute, at most, a pure contract violation. Accordingly, under EERA section 3541.5(b), the Board does "not have authority to enforce agreements between the parties." (Grant Joint Union High School District (1982) PERB Decision No. 196.)

governing the Board's jurisdiction over matters subject to the grievance/arbitration machinery of the collective bargaining agreement. That section states in pertinent part:

> The board shall have discretionary jurisdiction to review the settlement or arbitration award reached pursuant to the grievance machinery solely for the purpose of determining whether it is repugnant to the purposes of this chapter.

Thus, PERB's jurisdiction to review "settlements" is clearly limited to those arrived at through the grievance machinery of a collective bargaining agreement, and not through the mediation process, and then only to determine if the settlement is repugnant to the purposes of EERA.

With respect to the Association's request that the Board consider the "new supporting evidence as well as new charge allegations," we note that PERB Regulation 32635(b)[3] states:

> Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence.

The Association has failed to identify why good cause exists to consider any of the information not previously presented to the Board agent. Accordingly, the alleged new evidence and charge allegations may not be considered in determining if a prima facie case of an unfair practice charge is stated in this case.

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[3]PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

The unfair practice charge in Case No. LA-CE-2954 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairperson Hesse and Member Shank joined in this Decision.

STATE OF CALIFORNIA GEORGE DEUKMEJIAN. Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Lot Angeles Regional Office
3530 Wilshire Boulevard, Suite 650
Los Angeles, CA 90010-2334
(213)736-3127

September 21, 1990

Lloyd Roberts
Chapter Services Consultant
California Teachers Association
1906 So. Commercenter East, Suite 103
San Bernardino, California 92408

Re: Perris Secondary Educators Association v. Perris Union High School District, Unfair Practice Charge No. LA-CE-2954
DISMISSAL OF CHARGE AND REFUSAL TO ISSUE COMPLAINT

Dear Mr. Roberts:

The above-referenced charge alleges that the Perris Union High School District (District) engaged in bad faith bargaining by not implementing the recommendations of an insurance committee. This conduct is alleged to violate section 3543.5(c) and (b) of the Educational Employment Relations Act (EERA).

I indicated to you in my attached letter dated September 7, 1990 that the above-referenced charge did not state a prima facie case. You were advised that if there were any factual inaccuracies or additional facts that would correct the deficiencies explained in that letter, you should amend the charge accordingly. You were further advised that unless you amended the charge to state a prima facie case, or withdrew it prior to September 14, 1990, the charge would be dismissed. On September 17, 1990, your secretary, Marge, called me regarding your request for an extension. I granted an extension to Friday, September 21, 1990 for my receipt of an amended charge. On September 21, 1990, I called your office and your secretary, Stella, indicated in part that you will not be amending.

I have not received either a request for withdrawal or an amended charge. I am therefore dismissing the charge based on the facts and reasons contained in my September 7, 1990 letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, you may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after

service of this dismissal (California Administrative Code, title 8, section 32635(a)). To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing (California Administrative Code, title 8, section 32135). Code of Civil Procedure section 1013 shall apply. The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty calendar days following the date of service of the appeal (California Administrative Code, title 8, section 32635(b)).

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See California Administrative Code, title 8, section 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

Extension of Time

A request for an extension of time in which to file a document with the Board itself must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party (California Administrative Code, title 8, section 32132).

Final Date

If no appeal Is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

JOHN W. SPITTLER
General Counsel

By _____
Marc S. Hurwitz
Regional Attorney

Attachment

cc: Bradley E. Neufeld

PUBLIC EMPLOYMENT RELATIONS BOARD

Lot Angeles Regional Office
3330 Wilshire Boulevard. Suite 650
tot Angeles, CA 90010-2334
(213)736-3127

September *1,* 1990

Lloyd Roberts
Chapter Services Consultant
California Teachers Association
1906 So. Commercenter East, Suite 103
San Bernardino, California 92408

Re: Perris Secondary Educators Association v. Perris Union High School District, Unfair Practice Charge No. LA-CE-2954
WARNING LETTER

Dear Mr. Roberts:

The above-referenced charge alleges that the Perris Union High School District (District) engaged in bad faith bargaining by not implementing the recommendations of an insurance committee. This conduct is alleged to violate section 3543.5(c) and (b) of the Educational Employment Relations Act (EERA).

My investigation and the charge revealed the following information.

On May 4, 1989, the Perris Secondary Educators Association (Association) and the District reached a Tentative Agreement for the 1988-89 reopeners of the 1986-1989 agreement (Agreement). The settlement was encompassed in a Mediator's Settlement Proposal Regarding 1988-89 reopeners of the 1986-89 Agreement.

The Health and Welfare portion of the Mediator's Settlement Proposal stated:

> Unless the parties have, prior to August 1, 1989, reached an agreement on some different program, the health and welfare program will be switched to the 'triple option' plan offered under the Joint Powers Agreement (JPA) between the Riverside and San Bernardino County Superintendents of Schools Offices. This plan will be put into effect as of October 1, 1989. Said program, as of October 1, 1989, shall consist of 'triple option' health plan, as well as a continuation of the current dental and vision plans.

> From the date of ratification by both parties of this proposal, to August 1, 1989, the parties shall continue to seek a better employee benefit program. The District shall provide all reasonable health benefit information necessary to assist in obtaining competitive bids from prospective carriers.

Included in this Tentative Agreement is a separate Letter of Agreement between the parties which was executed on May 4, 1989. The Letter of Agreement provides:

> The District and PSEA agree that, in order to study Health and Welfare benefit options between now and August 1, 1989, if the May 4, 1989 proposal is ratified, there shall be established an insurance committee, and that CSEA shall be invited to participate also along with the District and PSEA. The Committee will be outside of negotiations, and shall consist of two District representatives, two PSEA representatives, and CSEA shall be invited to have two representatives.

The Association alleges that "The establishment and function of this Committee was crucial to the acceptance of the ^Mediators Settlement Proposal. . . .'" The Tentative Agreement was ratified by the Association on May 8, 1989 and by the District on May 10, 1989 and its provisions implemented.

By memorandum dated May 30, 1989, Bill Hulstrom, Association President, requested that Steve C. Teele, Ph.D., Assistant Superintendent, Educational Services and Personnel, convene the insurance committee so that medical health plans could be studied and bids could be requested. On June 8, 1989, the committee convened to discuss the current medical insurance plan and to consider another medical plan (PERS). An agenda was set to consider other medical plans and bids. On June 29, 1989, the insurance committee met and three other medical plans and bids were studied and discussed. On July 14, 1989, the committee convened to review all the medical health plans studied and bids received, and to formulate a recommendation for medical health plans for the District and its bargaining unit representatives, the Association and CSEA. On July 14, 1989, the insurance committee recommendation was in part that certificated bargaining unit members would consider the Multiple Choice Medical Program

provided by Blue Cross and California Care with several restrictions.

On July 18, 1989, the Association requested a meeting with Dr. Teele in order for the insurance committee's recommendation regarding the Association to be agreed to and implemented. On July 21, 1989, the Association met with the District in order to request that the District implement the Association's request to implement the Blue Cross medical health plan which was stated in the committee's recommendations. The District did not respond, but stated that it had to discuss the matter with the Board of Education. On July 28, 1989, the District's attorney stated that the District would not be implementing the recommendations of the insurance committee regarding the Association.

On August 28, 1989, the Association sent a memorandum to Dr. Teele, Superintendent, indicating in part that the District was not bargaining in good faith by not implementing the recommendations of the insurance committee relating to the Association. The Association favored the Blue Cross Major Medical Insurance Plan rather than the JPA "triple option" plan. In a memorandum dated September 5, 1989, Dr. Teele indicated the reasons for the actions taken by the District previously. He indicated that on August 9, 1989, the Board of Trustees following the negotiations between the parties, acted to approve the JPA Major Medical Insurance Plan on behalf of the certificated bargaining unit members.

On October 1, 1989, the District in fact implemented the JPA "triple option" plan for the Association members.

The Association alleges that the District has engaged in bad faith bargaining due to all of the above including the fact that the Administration had no negative response to the insurance committee's report, and the Administration stated that any plan would not cause any additional financial impact on the District because any medical insurance premium increases would be a first lien on 1989-1990 cost of living revenue subvention from the State. The Association further alleges the agreement was based on the concept that the Association would have some control over keeping medical costs from rising, including changing the benefits structure or changing medical insurance companies. The Association argues that being coerced to join the JPA "triple option" plan, completely negates the aforementioned concept.

This will confirm that during our telephone conversation on or about August 21, 1990, you indicated to me that you did not have

any additional information or more to add to the charge as currently written.

Based on the facts described above, this charge does not state a prima facie violation of the EERA for the reasons which follow.

It is not alleged, nor has it been shown that the recommendations of the insurance committee and/or of the Association must be accepted or implemented by the District. The Mediators' Settlement Proposal merely allowed for an insurance committee and negotiations to take place prior to August 1, 1989. Failing agreement by August 1, 1989, the health and welfare program was to be switched to the "triple option" plan offered under the JPA. Said plan was to be put into effect on October 1, 1989.

Thus, the charge as presently written fails to show evidence of bad faith bargaining. Neither does it contain the elements for a unilateral change violation.

For these reasons, the charge as presently written does not state a prima facie case. If there are any factual inaccuracies in this letter or any additional facts that would correct the deficiencies explained above, please amend the charge accordingly. The amended charge should be prepared on a standard PERB unfair practice charge form clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and must be signed under penalty of perjury by the charging party. The amended charge must be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before September 14, 1990. I shall dismiss your charge. If you have any questions, please call me at (213) 736-3127.

Sincerely,

JOHN SPITTLER
General Counsel

by Marc S. Hurwitz
Marc S. Hurwitz
Regional Attorney

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