

## 9 PERC ¶ 16037

### EASTSIDE UNION SCHOOL DISTRICT

California Public Employment Relations Board

#### **Eastside Teachers Association, Charging Party, v. Eastside Union School District, Respondent.**

Docket No. LA-CE-1821

Order No. 466

December 19, 1984

Before Hesse, Chairperson; Tovar and Jaeger, Members

**Unfair Practice Procedures -- Investigation -- Refusal To Issue Complaint -- 71.53, 71.211, 72.664**In refusing to issue complaint on union's charge, which alleged that school district unilaterally discontinued contractual insurance benefits for teachers who submitted resignations at end of school year, PERB agent improperly undertook to interpret parties' contract in light of district's alleged established practice. Question of whether district was obligated to maintain benefits through summer until start of September semester, or was entitled to discontinue benefits on ground that affected teachers were no longer "employees" within meaning of contract, was not clear from contractual language on its face. Accordingly, hearing was necessary to resolve issue of alleged repudiation of contract.

#### APPEARANCES:

Charles R. Gustafson, Attorney, for Eastside Teachers Association; Wagner, Sisneros & Wagner, by John J. Wagner, Attorney, for Eastside Union School District.

#### DECISION

JAEGER, Member: The Eastside Teachers Association (ETA) appeals the dismissal of its unfair practice charge which alleges that:

1. Three teachers informed the Eastside Union School District that they would not be returning to the school the following September for the 1983-84 semester.
2. They had worked as full-time teachers in the District during the entire 1982-83 school year.
3. The negotiated agreement between ETA and the District required the District to pay \$2,898.30 towards the employees' insurance benefits for the period October 1, 1982 to September 30, 1983.
4. The District paid only \$2173.73 toward the premiums for each of the three teachers and in May 1983 informed them that its payments would be discontinued as of June 30, 1983 and that the teachers could continue their coverage for July, August and September by paying the full premium.
5. On or about June 1, ETA met with the District superintendent, asserting that the teachers were full-time teachers for the 1982-83 year and, according to the contract, were entitled to a full-year's premium from the District. ETA indicated it was prepared to file a grievance over the matter unless the District preferred to try to reach settlement informally. The District indicated that it preferred to try to settle the matter informally before a grievance was filed.
6. On June 20, a meeting was held between the District and ETA at which the District announced it would not continue the premiums for July, August and September. ETA requested the specific

grievance form required by the contract and was told the District had none but would accept the grievance on any form.

7. On July 15, ETA's further effort to achieve voluntary settlement proved futile and a grievance was filed. The District refused to accept the grievance because it was not properly written. A revised grievance was then submitted.

8. On July 18, the District notified ETA that it was denying the grievance as untimely and because, according to the contract, the teachers were not employees of the District.

9. ETA checked with the insurance carrier and determined that the District had paid full premiums for all teachers except the three subjects of the charge.

## DISCUSSION

A PERB Board agent investigated the charge, ultimately dismissing it on the grounds that the District had a past practice of discontinuing premiums for teachers who were not returning for the following school year,<sup>2</sup> and that the teachers had been notified of the premium discontinuance by June 20 and had not filed a grievance by July 15, the end of the 15-day filing period required by the contract.

Based on *these* alleged facts, the Board agent concluded that the charge did not state a prima facie violation of the Educational Employment Relations Act (EERA).<sup>3</sup>

Although the Board agent had found the foregoing sufficient to warrant dismissal of the charge, she included in her notice of dismissal other reasons to support her decision. She cited Education Code section 37200, which provides that the last day of the school year is June 30, and section 44930, which provides that the effective date of certificated employee resignations shall be no later than the close of the school year during which the resignation has been received by the school board. She then decided that the teachers were not employees during the months of July, August and September. She also concluded that ETA's asserted unawareness of the long-standing District practice of discontinuing premiums was insufficient to establish an unlawful change of policy.<sup>4</sup>

ETA contends that the three teachers were at all pertinent times employees within the meaning of the contract as demonstrated by the District's policy of continuing benefits for retirees, that the contract provides that accrual of benefit rights is based on the preceding year's service, and that the contract provision defining "insurance year" controls rather than the Education Code provisions cited by the Board agent. Specifically, ETA argues that the District's past practice was to extend coverage through September following the end of the preceding school period and that the contract memorialized that practice by providing that the District's obligation was to pay a total contribution of \$2898.30 *annually* for the insurance period of *October 1 to September 30* of any year. (ETA's emphasis).

ETA further argues that teachers retiring in September have performed the necessary annual service defined in the contract on which the accrual of benefits is based, and that ending the coverage year on September 30 was to permit the succeeding annual policy to begin at a time when the identity of the covered employees can be determined.

ETA's argument continues: if the District had a past practice of discontinuing premiums as of June 30, it was secret and in violation of the contract. The statute of limitations does not bar an action where the party has neither actual nor constructive knowledge of the unfair practice, nor where the unlawful practice is a continuing one. For the same reasons, failure to protest past violations does not constitute a waiver. Further, the grievance was not untimely. It was the District's partial payment of July 5, not the earlier threat to discontinue full payment, that started the grievance filing time, and the District influenced the timing of the filing by not having the proper form available and by requesting that the grievance be deferred pending efforts at informal resolution.

Finally, returning to the matter of the teachers' status, ETA contends that they were certainly employees at the time the grievance arose.

It is not necessary to evaluate each of ETA's arguments. The single question before the Board is whether the charge alleges facts which, if true, constitute evidence of a violation of EERA section 3543.5(c). *San Juan Unified School District (3/31/82)* PERB Decision No. 204.

Board Regulation 32620(a)(4) authorizes Board agents to investigate charges to determine if an unfair practice has been committed. But when read in the context of the entire section, and in conjunction with Regulation 32640, it is clear that it was not the Board's intention to empower agents to rule on the ultimate merits of a charge.<sup>5</sup> Rather, the Regulations were designed to permit a determination that the facts as alleged in the charge state a legal cause of action and that the charging party is capable of providing admissible evidence in support of the allegations. Consequently, where the investigation results in receipt of conflicting allegations of fact or contrary theories of law, fair proceedings, if not due process, demand that a complaint be issued and the matter be sent to formal hearing.

Here, the Board agent made no determination that ETA would be unable to produce testimonial or documentary evidence in support of its charge. Nor did she conclude that, even if true, the facts did not describe an unfair practice. Rather, she accepted Respondent's *ex parte* statements as to its claimed past practice as conclusive, looked to the Education Code to find in the parties' agreement a meaning quite different from that asserted by ETA, and found fatal ETA's failure to grieve within 15 days of the District's action.

As to the latter matter, the charge is that the District violated *EERA* by unilaterally changing the contractual obligation to continue premium payments through September. Therefore, the six-month limitation on filing unfair practice charges found in section 3541.5 is applicable in this case. As for the other grounds for the dismissal, it is clear that the Board agent ultimately decided the *merits* of the dispute as she perceived them to be.<sup>6</sup>

There remains the question of whether the charge is sufficient to warrant the issuance of a complaint. We find it to be so. The negotiated agreement requires the District to pay up to \$2898.30 annually for the insurance period of October 1 to September 30 of any year for each eligible employee.<sup>7</sup> Eligible employees are defined as full-time employees and those who serve less than full time, but half time or more.

Article III of the contract defines the service year as 180 days for any school year within the term of the contract. The charge alleges that the subject teachers each completed 180 days of full-time service during the period of September 1982 to June 1983. These dates fall within the boundaries of the contract term. The contract further provides that full-time employees who meet the *service* year requirements "shall have the District's financial contribution paid in full."

Nowhere in the agreement is there an express provision which limits the District's obligation toward an employee who has met the service year requirements but who will not return to the school for the following year. Nowhere in the agreement is there a definition of "employee" which, on its face, limits the District's premium obligation as to the employees here. Whether the contract can be so interpreted, or whether other evidence exists which would establish the District's right to curtail its premium contributions, are matters of affirmative defense which the District is clearly entitled to present and which ETA is equally clearly entitled to attempt to refute. But the place for either to be done is the hearing room.

We find that the charge alleges facts which, if true, constitute *prima facie* evidence that the District unlawfully altered a negotiated policy concerning insurance benefits for a certain category of full-time teachers and, by that action, violated its duty to negotiate in good faith as required by section 3543.5(c) of the *EERA*.<sup>8</sup>

## **ORDER**

Based on the record, the Public Employment Relations Board ORDERS that the dismissal of the

unfair practice charge filed by the Eastside Teachers Association against the Eastside Union School District is REVERSED and further ORDERS that the matter be remanded to the General Counsel for issuance of a complaint and appropriate further proceedings.

Member Tovar joined in this Decision.

Hesse, Chairperson, dissenting: The majority decision, at footnote 7, attempts to explain the contract language "up to \$2898.30 annually" as nothing more than a pro-rata option for the employer when an employee works less than the full school year. While interesting, this interpretation is nothing more than just that--an "interpretation" by the majority of what it believes the contract may have meant.

In truth, the plain meaning of the collective bargaining agreement obligates the employer to pay premiums only for employees. As charging parties had resigned, they were no longer employees after June 30, 1983. Thus, the District was under no obligation to pay premiums for these three teachers after that date. Had the parties wanted to obligate the employer to pay benefits beyond the date of employment, they could have negotiated such language. As they did not, and as I find no ambiguity in the contract that needs to be resolved by a hearing, I respectfully dissent from my colleagues' decision to issue a complaint on this charge of a unilateral change in the terms and conditions of employment.

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**1** The Board agent cited June 20 as the date of this notification.

**2** The Board agent was informed of this alleged past practice by the District during her investigation of the charge.

**3** Codified at Government Code section 3540, et seq.

**4** ETA objects to the Board agent's failure to have the parties confront each other with their versions of the facts, and claims it was kept particularly in the dark concerning the District's statements. It asserts that the Board agent could not understand the difficult and unique factual situation without such bilateral explanation.

**5** Board Regulations are codified at California Administrative Code, title 8, section 31001 et seq. Regulation 32620 reads:

(a) When a charge is filed, it shall be assigned to a Board agent for processing.

(b) The powers and duties of such Board agent shall be to:

(1) Assist the charging party to state in proper form the information required by Section 32615;

(2) Answer procedural questions of each party regarding the processing of the case;

(3) Facilitate communication and the exchange of information between the parties;

(4) Make inquiries and review the charge and any accompanying materials to determine whether an unfair practice has been, or is being, committed, and determine whether the charge is subject to deferral to arbitration, or to dismissal for lack of timeliness.

(5) Dismiss the charge or any part thereof as provided in Section 32630 if it is determined that the charge or the evidence is insufficient to establish a prima facie case; or if it is determined that a complaint may not be issued in light of Government Code sections 3514.5, 3541.5 or 3563.2 or because a dispute arising

under HEERA is subject to final and binding arbitration.

(6) Issue a complaint pursuant to Section 32640.

(c) The respondent shall be apprised of the allegations, and may state its position on the charge during the course of the inquiries.

Regulation 32640 reads:

(a) The Board agent shall issue a complaint if the charge or the evidence is sufficient to establish a prima facie case. . . .

**6** The Board agent was uncertain whether the charge alleges bad faith by the District in its responses to ETA's effort to file a grievance, but found that the "late filing" made it unnecessary to decide. We note that *if* the charge includes this matter, it may be interpreted as an allegation that the District violated the grievance procedure thereby denying the employees and ETA their respective statutory rights. Questions are then raised as to the applicability of the doctrine of equitable tolling, the right of an employer to refuse to receive a grievance which it considers to be "written improperly," and the possibility of a waiver of time limits by the District's failure to have proper forms available and its request that a formal filing be deferred in the interest of informal discussion.

**7** To interpret the words "up to \$2898.30" as endowing the District with the discretion to pay less than that amount for full-time employees who have met the service requirements is to give no thought to the context in which those words appear and to place the judicial robe between oneself and commonplace knowledge. The contract provides for *pro-rated* premium benefits for part-timers, and requires those employees to contribute percentages of the employer's contribution based on the proportion of part-time service performed. Thus the District's contribution would vary accordingly but never exceed the \$2898.30 maximum. Further, in view of virtually universal practice, one need not depend upon expert testimony to recognize that employers' premium obligations are invariably maximized at a stated figure for a given period of time. This protects the employer from any obligation to assume unexpected premium increases which might occur during that period. It also accommodates the wishes of employees who opt for an insurance program bearing premiums higher than those of the program which served as the basis of the employer's willingness to accept financial liability.

**8** See *Grant Joint Union High School District (2/26/82)* PERB Decision No. 196.

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