

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



OAK GROVE EDUCATORS ASSOCIATION,)
CTA/NEA,)
)
Charging Party,) Case No. SF-CE-788
)
v.) PERB Decision No. 503
) April 23, 1985
OAK GROVE SCHOOL DISTRICT,)
)
Respondent.)
_____)

Appearances: Michael R. White, Attorney for Oak Grove Educators Association, CTA/NEA; Kronick, Moskovitz, Tiedemann & Girard by Diana D. Halpenny for Oak Grove School District.

Before Hesse, Chairperson; Jaeger and Burt, Members.

DECISION

JAEGER, Member: This case is before the Public Employment Relations Board (PERB) on exceptions filed by the Oak Grove School District (District) to the proposed decision of an administrative law judge which found that the District had violated the Educational Employment Relations Act (EERA or Act)¹ by transferring a certificated employee without first negotiating with the Oak Grove Educators Association, CTA/NEA (Association). For the reasons which follow, we reverse the underlying proposed decision and dismiss the charge.

¹The EERA is codified at Government Code section 3540 et seq. All section references herein are to the Government Code.

FACTS

The District and the Association have been parties to two collectively negotiated contracts over the past six years. The first, beginning July 1978 and effective, by agreed extension, to June 1982, authorized the District to implement involuntary transfers based upon a ranking of possible transferees under four criteria: seniority, ability of the teacher to relate to present team members; affirmative action goals; and operational needs of the District. In practice, each school principal developed a list of more detailed criteria which fell generally under the four categories listed in the contract. The Association was not involved in development of these criteria. Involuntary transferees were selected by application of the detailed criteria without objection from the Association.

A successor contract became effective in June 1982. This agreement contained substantially new and different terms governing involuntary transfer, as follows:

11.5 Involuntary Transfers

11.5.1 Involuntary transfers shall be initiated by the Superintendent or designee and shall be limited to the following:

11.5.1.1 Changes of enrollment in a school, change in organization of a school or closing of a school or other work site.

11.5.1.2 To meet legal requirements of affirmative action or other legal requirements.

11.5.2 In the case of involuntary transfers pursuant to 11.5.1.1 (11.5.1.2 when there is

more than one bargaining unit member involved), the least senior unit member will be transferred unless the District needs to retain the least senior unit members for affirmative action, bilingual education or ESL, Functional Strand, special education, or need for particular subject matter skills at the junior high school level, and in that case the next least senior person will be transferred, and so on.

Both the old and the new contracts contained the same "management rights" article, which acknowledged the District's authority, among other powers, to "transfer personnel:"

It is understood and agreed that the District retains the right, duty, and authority to direct, manage, and control the affairs of the School District to the extent of the law, whose rights, duties, and authority are to determine its organization; to direct the work of the employees; to determine the kinds and levels of services to be provided; to establish the methods and means of providing them; to establish educational policies and goals; to determine the staffing pattern; to determine the number and kinds of personnel required; to transfer personnel; . . . and the right to hire, classify, assign, evaluate, promote, terminate and discipline employees. The exercise of the foregoing rights, duties, and authority by the District shall be limited only by the terms of this agreement.

In May 1983, the District determined that involuntary transfers were to take place at eight to ten schools. At six of those schools implementation of the contract provisions resulted in a "tie" in seniority among teachers.

District administrators Gary Clark and Susan Roper met with the principals of each of the affected schools prior to

implementing the involuntary transfers. Each principal was authorized to develop a list of criteria relating to educational needs at his or her school. Generally, the principals developed criteria covering employee evaluations, bilingual experience and credentials, extracurricular involvement, experience in teaching specific courses and affirmative action goals. Then each principal ranked the affected teachers at the school on a point method based upon the criteria list. Ties in seniority were broken in this manner in approximately seven or eight instances. The record does not indicate whether all noticed transfers were actually effectuated.

Employee Rosalinda Olson and one other teacher were notified by their principal on May 13 that they were tied in seniority and that the tie would be resolved by application of the criteria developed by the principal. On May 25, the principal applied the criteria and notified Olson that she would be transferred. Olson notified an Association officer of the action soon thereafter. The Association represented Olson in grievance proceedings, but was unsuccessful in reversing the District's action.

Negotiating History

At negotiations for the 1982-84 contract, the Association proposed language to change the involuntary layoff procedure so that involuntary transferees would in the future be selected solely on the basis of seniority rather than the four criteria

of the prior contract. The District initially resisted, citing the importance of other factors in a transfer decision. At one point in the negotiations a written proposal which included a tie-breaker provision was offered by the Association. However, that proposal was withdrawn without being discussed. Ultimately, the Association proposed the language which now appears in the contract. Because this language gave protection to District interests in affirmative action, bilingual education and other specified matters, the District agreed to it. However, no tie-breaking method was specified.

Apparently because the school summer vacation was imminent, in June 1982 the parties agreed to sign and ratify the contract even though specific final language had not yet been agreed upon with respect to some of the matters which the parties had negotiated. This agreement to execute the contract, however, was with the mutual understanding that the parties would continue to meet in order to finalize the unresolved points. Thus, just a few days after execution, the parties appended to the contract side letters of agreement on the issues of class size, home teaching and school board bylaws.

The parties had also agreed prior to execution to a series of meetings to resolve other potential problem areas in the contract. Association witnesses testified that the Association expected that one purpose of these meetings would be to add tie-breaking language to the transfer provision. However, the

District witness indicated that the tie-breaker issue was not one of the matters the District had in mind when it agreed to hold these post-contract meetings. Aside from this testimony of the Association representatives' state of mind, there is no evidence of any specific agreement that a transfer tie-breaker would be a subject of the "clarification meetings."

Only one meeting was held for contract clarification purposes. While the transfer article was discussed with respect to certain refinements, the tie-breaker issue was not mentioned. Lengthy delays followed before another "clarification" meeting could be held because the District did not want to meet during the fall when school board elections were being held. When the parties met again in January 1983, the District stated that it would not participate in any further clarification meetings, suggesting to the Association that it utilize its reopener options in the contract if it wanted to amend the agreement. The Association never made a request to reopen on the subject of a transfer tie-breaker. On June 10, 1983, the Association filed the instant charge.

DISCUSSION

It is well settled that a public school employer, absent compelling justification, cannot change a working condition within the EERA's scope of representation without first providing the exclusive representative of affected employees with an opportunity to meet and negotiate. Such unilateral

action violates the duty to negotiate in good faith which is codified at section 3543.5(c). Because that action also effectively denies the representational rights of both the employees and the exclusive representative, it also violates sections 3543.5(a) and (b). San Francisco Community College District (1979) PERB Decision No. 105; Pajaro Valley Unified School District (1978) PERB Decision No. 51; NLRB v. Katz (1962) 369 U.S. 736 [58 LRRM 2177].

To show that a unilateral change has occurred, the charging party logically must first prove what the employer's prevailing practice or policy was as to the working condition at issue. Having established this "status quo ante," the charging party must then show that the employer has, without first providing an opportunity to negotiate, departed from that prevailing policy or practice in a way which evidences the adoption of a new policy having a generalized effect or continuing impact upon the bargaining unit members. Grant Joint Union High School District (1982) PERB Decision No. 196.

In the instant case, the Association charges that the District's selection of Rosalinda Olson for involuntary transfer evidences a unilateral change in transfer policy in violation of the EERA. Our review of the record evidence, however, fails to show that the transfer of Olson was inconsistent with the transfer policy which existed at the time.

The facts show that the prevailing practice during the term of the old 1978-82 contract permitted the District substantial discretion in selecting an individual for transfer. The District was required to observe the four general guidelines set forth in the contract; so long as the District complied with these contractual guidelines, however, it was permitted through its principals to determine which employee would be transferred.

In negotiating the 1982-84 contract, the Association had an opportunity to modify the existing transfer policy. It took advantage of that opportunity and succeeded in significantly modifying the District's policy. Thus, the four general criteria specified in the previous contract were replaced with the single criterion of seniority.

The District's actions in May 1983 show that it did not depart from the modified transfer policy when it transferred Rosalinda Olson. As in the past, it applied the contractual requirements, in this case by identifying the teachers with the least seniority. When application of the contractual criterion produced more than one candidate for transfer, the District acted consistently with the unmodified portion of prior transfer policy by having the school principal prepare detailed criteria for the purpose of completing the transfer decision.

The Association argues that, even if the new contract language on its face does not prohibit the District from

transferring Olson as it did, the District nevertheless violated its duty to negotiate. The Association asserts that the language appearing in the contract does not constitute the party's good faith final agreement because they had actually agreed to discuss changes and additions to the language at post-execution "clarification" meetings. Our own review of the record, however, confirms the finding reached by the administrative law judge. He stated in his proposed decision that:

The record does not support a finding that the District made a specific agreement to clarify the involuntary transfer provision of the contract with respect to implementation of the seniority criteria. Association witnesses . . . could not support their claim by any specific discussions between the parties or statements by District representatives.

ORDER

Upon the foregoing findings of fact and conclusions of law, the charge and complaint in Case No. SF-CE-788 are DISMISSED.

Chairperson Hesse and Member Burt joined in this Decision.