

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



EL DORADO UNION HIGH SCHOOL DISTRICT.)
)
Charging Party.) Case No. S-CO-117
)
v.) Request for Reconsideration
) PERB Decision No. 537
EL DORADO UNION HIGH SCHOOL DISTRICT)
FACULTY ASSOCIATION, CTA/NEA,) PERB Decision No. 537a
)
Respondent.) February 3, 1986
)
_____)

Appearances; Girard & Griffin by Thomas M. Griffin for the El Dorado Union High School District; Diane Ross, attorney for the El Dorado Union High School District Faculty Association, CTA/NEA.

Before Hesse, Chairperson; Jaeger and Burt, Members.

DECISION

JAEGER, Member: The El Dorado Union High School District Faculty Association, CTA/NEA (Association) requests reconsideration of Decision No. 537 issued by the Public Employment Relations Board (PERB or Board) on December 2, 1985. The request is based on the contention that the Board committed an error of law in Decision No. 537 in holding (inter alia) that the Association and its members violated section 3543.6(c) of the Educational Employment Relations Act (EERA or Act)¹ by refusing to report to the required worksite for the first 30

¹EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3543.6(c) provides that it is unlawful for an employee organization to fail to negotiate in good faith.

minutes of the workday on October 8, 1984, thereby engaging in a partial strike prior to the exhaustion of impasse procedures set forth in EERA section 3548.

The Board has reviewed the Association's arguments in light of its Decision No. 537 and grants reconsideration. Except to the extent modified hereafter, the Board's findings of fact and conclusions of law set forth in its Decision No. 537 are incorporated herein.

DISCUSSION

The Association's request rests on decisions issued by the United States Supreme Court and various federal courts holding that unprotected work stoppages do not necessarily constitute unlawful refusals to bargain.² The difficulty the Board finds in the Association's arguments and case citations is their failure to take into account substantial distinctions between EERA and the National Labor Relations Act. and decisions of the California Supreme Court and one District Court which bear directly on the issue at hand.

In San Diego Teachers Association v. Superior Court (1979) 24 Cal.3d 1 [154 Cal. Rptr. 893], the Court noted EERA's

²E.g.: NLRB v. Insurance Agents International Union (1960) 361 U.S. 477 [45 LRRM 2704]; Textile Workers Union of America v. NLRB (1955) 227 F.2d 409 [36 LRRM 2778].

inclusion of statutory impasse procedures, not present in the NLRA, and the related provision at section 3543.6 that

It shall be unlawful for an employee organization to:

.....

(d) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with section 3548).

The Court stated:

An unfair practice consisting of "refus[al] to participate in good faith in the impasse procedure" (sec. 3543.6(d)) could be evidenced by a strike that was otherwise legal.

.....

Since they [impasse procedures] assume deferment of a strike at least until their completion, strikes before then can properly be found to be a refusal to participate in the impasse procedures in good faith and thus an unfair practice under section 3543.6. subdivision (d).

Although the Court did not expressly find strikes prior to the exhaustion of the statutory procedures to violate the Act, the Board has found in the Court's analysis a convincing argument, barring extenuating circumstances, for such holdings.³

In its Decision No. 537. the Board concluded that the Association's partial work stoppage violated section 3543.6(c). In so doing, it made no reference to Moreno Valley Unified

³See. Rio Hondo Community College District (1983) PERB Decision No. 292; Westminister School District (1982) PERB Decision No. 277.

School District v. PERB (1983) 142 Cal.3d 191. There, the District Court expressly found that the employer's unilateral changes of matters subject to negotiation after the parties had declared impasse but before the exhaustion of the statutory procedures, did not violate section 3543.5(c).⁴ The Court interpreted section 3548 to mean that the District's duty to bargain in good faith terminated when the parties declared impasse. However, the District was found to have violated its duty to participate in good faith in the statutory impasse procedures.⁵

Consequently, the Board now dismisses the charge that, by refusing to report to the school premises until 8:30 a.m., the Association violated section 3543.6(c) and finds instead that this partial work stoppage prior to the exhaustion of the impasse procedures violated section 3543.6(d). For the same reasons, we reinstate the administrative law judge's finding that the Association violated section 3543.6(d) by its post-impasse boycott of required extra-curricular duties.

ORDER

Based on the entire record in this case, including the request for reconsideration of Decision No. 537 filed by the El Dorado Union High School District Faculty Association,

⁴This section makes it unlawful for an employer to refuse to negotiate in good faith.

⁵Section 3543.5(d) is the employer equivalent of section 3543.6(d).

CTA/NEA, the Public Employment Relations Board ORDERS that the Association and its members shall:

A. CEASE AND DESIST FROM:

1. Violating section 3543.6(c) of the Educational Employment Relations Act by instigating, encouraging or engaging in an employee boycott of required extra-curricular duties while under an obligation of law to negotiate in good faith with the El Dorado Union High School District; and

2. Violating section 3543.6(d) of the Educational Employment Relations Act by instigating, encouraging or engaging in: 1) an employee boycott of required extra-curricular duties or; 2) a concerted refusal to report to the El Dorado High School premises during any part of the required workday, thereby engaging in a partial strike while under an obligation of law to participate in good faith in impasse procedures with the El Dorado Union High School District.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION DESIGNED TO EFFECTUATE THE PURPOSES OF THE EDUCATIONAL EMPLOYMENT RELATIONS ACT:

1. Within thirty-five (35) days following the date of this Decision, post at all work locations where Association notices to employees customarily are placed, copies of the Notice attached as an Appendix hereto, signed by an authorized agent of the Association. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to insure that this Notice is not reduced in size, defaced, altered or covered by any material.

2. Written notification of the actions taken to comply with this Order shall be made to the regional director of the Public Employment Relations Board in accordance with his instructions.

Member Burt joined in this Decision.

Chairperson Hesse's concurrence begins on page 7.

Hesse, Chairperson: I reiterate and incorporate my concurrence in Decision No. 537 herein.

APPENDIX



NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California

After a hearing in Unfair Practice Case No. S-CO-117. El Dorado Union High School District v. El Dorado Union High School District Faculty Association. CTA/NEA, in which all parties had the opportunity to participate, it has been found that the El Dorado Union High School District Faculty Association and its members violated section 3543.6(c) of the Educational Employment Relations Act by boycotting required extra-curricular duties during a time when the Association had an obligation to negotiate in good faith with the El Dorado Union High School District. It has also been found that the Association and its members violated section 3543.6(d) by the same conduct, and by refusing to report to the El Dorado Union High School premises during the period from 8:00 a.m to 8:30 a.m. on October 8, 1984, during a time when the Association had an obligation to participate in good faith in impasse procedures with the District. As a result of this conduct, we have been ordered to post this Notice and will abide by the following. We will:

CEASE AND DESIST FROM:

A. Failing to participate in impasse procedures in good faith with the El Dorado Union High School District by refusing to report to school premises during the period from 8:00 a.m. to 8:30 a.m. as required by the parties' contract;

B. Instigating, encouraging, or engaging in a boycott of required extra-curricular duties.

Dated: _____ EL DORADO UNION HIGH SCHOOL
DISTRICT FACULTY ASSOCIATION

By: _____
Authorized Representative

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED BY ANY MATERIAL.