

The Board has reviewed the entire record in this case, including the unfair practice charge, the warning and dismissal letters and the District's appeal.² The Board finds the warning and dismissal letters to be free from prejudicial error and adopts them as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. LA-CO-762 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Jackson joined in this Decision.

exclusive representative.

²Attachment A to the District's appeal is identified as "a copy of the ground rules contained in the collective bargaining agreement." On May 28, 1998, during her investigation of the charge, the Board agent telephoned the District and requested that it provide a copy of the ground rules allegedly violated by the Association. As of June 11, 1998, the District had failed to provide the ground rules and the Board agent dismissed the charge.

PERB Regulation section 32635(b) provides that, "[u]nless good cause is shown, a charging party may not present on appeal new charge allegations or supporting evidence." The District does not provide any reason, whatsoever, for its failure to provide the ground rules during the Board agent's investigation. Accordingly, the District has failed to demonstrate good cause sufficient to justify the admission of that evidence at this time. (Santa Clarita Community College District (1996) PERB Decision No. 1178, p. 2, fn. 2; Oakland Education Association (Freeman) (1994) PERB Decision No. 1057, p. 3.)

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 439-6940



June 11, 1998

Bonifacio Bonny Garcia, Esq.
500 Citadel Drive, Suite 390
Los Angeles, CA 90040

Re: **DISMISSAL OF CHARGE/REFUSAL TO ISSUE COMPLAINT**
Southwestern Community College District v. Southwestern
College Education Association. CTA
Unfair Practice Charge No. LA-CO-762

Dear Mr. Garcia:

The above-referenced unfair practice charge, filed March 26, 1998, alleges the Southwestern College Education Association, CTA (Association) engaged in bad faith bargaining. The Southwestern Community College District (District) alleges this conduct violates Government Code section 3543.6 (c) of the Educational Employment Relations Act (EERA or Act).

I indicated to you, in my attached letter dated May 13, 1998, 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 which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to May 20, 1998, the charge would be dismissed. This deadline was later extended until May 26, 1998.

On May 26, 1998, I received an amended charge. The amended charge alleges the totality of the circumstances demonstrates the Association violated its duty to bargain in good faith. More specifically, the amended charge alleges the Association violated agreed upon ground rules for negotiations, thus providing an additional indicia of bad faith. (Stockton Unified School District (1980) PERB Decision No. 143.) The charge does not, however, provide any facts demonstrating what the agreed upon ground rules were. On May 28, 1998, I telephoned your office and requested a copy of the agreed upon ground rules. To date, I have not received this information.

Charging Party contends the Association's refusal to schedule bargaining sessions during finals week and Winter break demonstrates bad faith on the part of the Association. However,

as noted in the May 13, 1998, letter, such facts alone are insufficient to demonstrate the Association violated its duty to bargain in good faith. As the charge fails to provide any additional facts demonstrating the Association acted in bad faith, the charge is dismissed for the reasons stated in my May 13, 1998, 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. (Cal. Code of Regs., tit. 8, sec. 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 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. (Cal. Code of Regs., tit. 8, sec. 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 (20) calendar days following the date of service of the appeal. (Cal. Code of Regs., tit. 8, sec. 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 Cal. Code of Regs., tit. 8, sec. 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 (3) 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. (Cal. Code of Regs., tit. 8, sec. 32132.)

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Final Date

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

Sincerely,

ROBERT THOMPSON
Deputy General Counsel

By
Kristin L. Rosi
Regional Attorney

Attachment

cc: Charles R. Gustafson, Esq.

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 439-6940



May 13, 1998

Bonifacio Bonny Garcia, Esq.
500 Citadel Drive, Suite 390
Los Angeles, CA 90040

Re: **WARNING LETTER**

Southwestern Community College District v. Southwestern
College Education Association. CTA
Unfair Practice Charge No. LA-CO-762

Dear Mr. Garcia:

The above-referenced unfair practice charge, filed March 26, 1998, alleges the Southwestern College Education Association, CTA (Association) engaged in bad faith bargaining. The Southwestern Community College District (District) alleges this conduct violates Government Code section 3543.6 (c) of the Educational Employment Relations Act (EERA or Act).

Investigation of the charge revealed the following. The Association is the exclusive representative of the District's certificated bargaining unit. The District and the Association are parties to a collective bargaining agreement (Agreement) which expired on December 31, 1997. The parties are currently negotiating for a successor agreement.

The parties negotiated during the Fall of 1997. Bargaining unit members serving on the Association's bargaining team are granted 20% release time for one semester in order to participate in negotiations. Prior to the commencement of negotiations, the District proposed negotiating sessions be held on consecutive, full days. The Association requested a variety of half-day sessions to accommodate those teachers who did not wish to be out of the classroom for full days. The parties agreed to use these half-day sessions.

On December 4, 1997, prior to the end of the first term, the parties met for a negotiating session. During this meeting, the Association stated that it would not be able to meet again until February 1998, after January intercession. The Association took this position notwithstanding the fact that some Association members had not used their entire 20% release time, and that the release time did not carry over into the next semester. The District then stated its willingness to bargain during the

January intercession, and to pay bargaining team members for their attendance. The Association rejected this proposal, as employees did not want to work during the intercession.

On January 15, 1998, the District offered to pay a stipend to bargaining team members so that negotiations could be conducted in February on consecutive days. Specifically, the District proposed that bargaining take place on five consecutive working days in February. If the parties failed to reach an agreement, bargaining would continue each consecutive Saturday until the parties reached agreement or impasse. Bargaining unit members would be compensated on working days, but not on Saturdays.

On February 10, 1998, the Association rejected this proposal. In doing so, Association President Cornia Soto cited teachers desire to work in the classroom during the week as the primary reason for this rejection. The Association proposed, instead, that the parties negotiate on Saturdays, and that the District compensate bargaining unit members for those Saturday sessions.

On February 19, 1998, District Chief Negotiator, Bonafacio Garcia, responded to the Association's proposal. Mr. Garcia stated in pertinent part that the District had provided release time to employees in the Fall of 1997, and had offered a stipend for negotiations in the Spring, during working hours. The District, rejected however, the Association's proposal and offered instead to bargain on consecutive Saturdays without providing a stipend to unit members or administrators.

Although the specific date is not provided, the District agreed to meet on Saturdays to conduct negotiations. It is also presumed that bargaining members were not paid for their attendance at these sessions. The first Saturday bargaining session was then scheduled for March 14, 1998.

On March 13, 1998, the Association cancelled the negotiating session for the following day, stating that their CTA representative was unavailable. On this same date, Mr. Garcia wrote a letter to Ms. Soto expressing the District's extreme concern over the cancellation and the progress of bargaining.

On March 18, 1998, the District provided the Association with its last, best and final offer. On March 23, 1998, the Association's Executive Board wrote Mr. Garcia stating its desire to continue negotiations, despite the District's offer.

Based on the above stated facts, the charge as presently written, fails to demonstrate a prima facie violation of the EERA, for the reasons stated below.

In determining whether a party has violated EERA section 3543.6(c), PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. (Stockton Unified School District (1980) PERB Decision No. 143.) Allegations such as the ones provided by District above, are considered under the "totality of the conduct" test, as they do not constitute per se violations of the Act. Under the totality of the conduct test, PERB will look at the entire course of negotiations to determine whether the conduct indicates a serious attempt to resolve differences or whether the parties intent is to frustrate or avoid the bargaining process. (Pajaro Valley Unified School District (1978) PERB Decision No. 51.)

The ground rules for negotiation, including the time and place of negotiations, are subjects within the scope of bargaining. (Compton Unified School District (1989) PERB Decision No. 728.) Bargaining over ground rules is done in the same manner as for substantive terms and conditions for employment. (Id.) In the instant charge, facts provided by the Charging Party demonstrate the Association and District exchanged numerous proposals regarding the time and place of negotiations. The mere fact that the parties disagreed and negotiated over the ground rules does not demonstrate the Association's bad faith. Moreover, the Association's single cancellation of a bargaining session, without more, does not demonstrate they were attempting to avoid bargaining. As such, the charge fails to state a prima facie case.

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 additional facts which would correct the deficiencies explained above, please amend the charge. 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 be signed under penalty of perjury by the charging party. The amended charge must have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before May 20, 1998, I shall dismiss your charge. If you have any questions, please call me at (415) 439-6940.

Sincerely,

Kristin L. Rosi
Regional Attorney