

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

POWAY FEDERATION OF TEACHERS,
LOCAL 2357,

Charging Party,

v.

POWAY UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. LA-CE-4169-E

PERB Decision No. 1430

April 30, 2001

Appearances: Emily Shieh, Attorney, for Poway Federation of Teachers, Local 2357; Atkinson, Andelson, Loya, Ruud & Romo by Clifford D. Weiler, Attorney, for Poway Unified School District.

Before Amador, Baker and Whitehead, Members.

DECISION

BAKER, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by the Poway Federation of Teachers, Local 2357 (PFT) from a Board agent's dismissal of its unfair practice charge. The charge alleged that the Poway Unified School District (District) violated section 3543.5(c) of the Educational Employment Relations Act (EERA)¹ by unilaterally implementing a work calendar for the 2000-2001 school year.

¹EERA is codified at Government Code section 3540 et seq. Section 3543.5(c) states, in pertinent part:

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

After review of the entire record in this matter, the Board holds that the PFT has stated a prima facie violation of EERA section 3543(c) and remands the case to the General Counsel's office for issuance of a complaint.

BACKGROUND

The District and PFT are parties to a collective bargaining agreement (Agreement).

With regard to the certificated calendar, the Agreement states:

A committee composed of representatives of the Exclusive Representative and administration representatives will develop a Certificated Calendar for recommendation to the Superintendent and the Board of Education. No later than December 1 of each year of the contract, the parties will develop and agree to a Certificated Calendar for the succeeding year.

On November 10 and November 29, 1999, the calendar committee met to discuss the 2000-2001 calendar. While the members studied several calendar options, no one calendar was satisfactory to all members of the committee.

On December 9, 1999, the PFT calendar committee members met with the PFT executive board. During this meeting, PFT calendar committee members presented the most favored proposed calendar and lobbied for its approval. However, the PFT executive board rejected the calendar and directed the PTF officers to meet with the administration and establish the calendar through the parties Interest Based Problem Solving bargaining process.

On December 11, 1999, the District held its monthly board meeting. During this meeting, the school board trustees agreed to remove adoption of the 2000-2001 calendar from its agenda, as negotiations were ongoing. The school board trustees directed their administrative staff to set the matter for the January 18, 2000, trustees meeting.

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

On January 12, 2000, the parties met for three hours to discuss the calendar. No agreement was reached at that meeting. On January 18, 2000, the school board trustees again removed the "calendar" from its agenda, ordering the parties back to the table.

On February 14, 2000, the parties met for two hours. After two hours of negotiations, the parties were very close to consensus on one calendar option, but failed to gain the support of all members. At the close of that meeting, it was agreed that the parties would recommend that the trustees either adopt the calendar option for which the committee was very close to consensus at the conclusion of the February 14, 2000 negotiations or send the calendar committee back to the negotiations table.

During the February 22, 2000 school board meeting the trustees heard the calendar issue. During the meeting, Assistant Superintendent William Chiment, reported that the parties had yet to reach agreement. PFT President Donald Raczka then requested the trustees order the parties back to the bargaining table. Rather than sending the parties back to the table or adopting the aforementioned February 14, 2000 potential calendar option, the school board trustees' meeting minutes stated the following action was taken:

Mrs. Ranftle said that it was a business necessity that the Board adopt a calendar tonight and she suggested that they adopt a student calendar as contained in Option B with school starting on August 28 and ending on June 14. . .

It was moved by Mrs. Ranftle, seconded by Mr. Mangum that the Board adopt a student calendar contained in Option B and her direction to staff would be to continue negotiating the teacher's work year through the Interest-Based Problem Solving Process. That is her motion.

The motion was unanimously adopted by the school board, which issued the school calendar on February 23, 2000. The calendar adopted by the school board was not the same as the calendar the parties were close to consensus on at the conclusion of their February 14, 2000

meeting. The calendar noted the start and ending dates of school, along with legal holidays and school recesses, such as winter break and spring break.

DISCUSSION

To prevail in a case involving an alleged unlawful unilateral change, the charging party must establish that the employer breached or altered the parties' written agreement or established past practice; the action was taken without giving the exclusive representative notice or the opportunity to bargain over the change; the change was not merely an isolated breach but represented a change in policy having a generalized or continuing impact on the terms and conditions of employment of bargaining unit members; and the change concerned a matter within the scope of representation. (Grant Joint Union High School District (1982) PERB Decision No. 196 (Grant); Pajaro Valley Unified School District (1978) PERB Decision No. 51.)

Under PERB precedent a school calendar is negotiable insofar as it relates to the work of the employees, including beginning and ending dates, summer vacation and holidays. (Davis Joint Unified School District (1984) PERB Decision No. 474.) However, an employer does not commit an unfair practice by unilaterally adopting a student, rather than an employee calendar. (Compton Community College District (1990) PERB Decision No. 790 (Compton.)

In Compton, the Board found that the adoption of a tentative student calendar, while continuing to negotiate with the exclusive representative concerning employee workdays, did not violate EERA. Here, as in Compton, the District unilaterally adopted a student calendar, along with starting and ending dates, holidays and recesses for students, while explicitly stating the calendar did not set teacher workdays. Despite the District's assertion that the calendar did not set teacher workdays, we find the PFT has stated a prima facie case for the reasons that follow.

On appeal PFT argues that because the District adopted student calendar sets the students' starting and ending dates, summer vacation, holidays and recesses; it also sets those dates for teachers. PFT therefore argues that the District adopted both a student calendar and a teacher work year calendar, the latter in violation of EERA. In its appeal PFT argues, "[A]lthough the Board directed the staff to continue to negotiate with the PFT on 'the teachers' work year,' a decision had already been made on every point that was open to negotiation."

The District's response proffers that "[T]he ability of a public school district to determine the days when its students shall be educated is a foundational element of the educational process." The District argues that setting the student calendar is a managerial prerogative and if an exclusive representative is able to "prevent" or "inhibit" this determination, exclusive representatives would "continually use the issue as a bargaining chip to gain compromises upon issues within the scope of bargaining and be able to hold the entire educational process hostage."

The District further argues that it adopted only a student calendar, not a certificated work calendar, noting that when the school board adopted the student calendar, it gave explicit direction to the District staff to continue negotiating the teachers' work year.

In its appeal, PFT equates the District's action with that of the District in Oakland Unified School District (1983) PERB Decision No. 367 (Oakland). In Oakland, the Board found that the calendar adopted by the District was intended to cover both student attendance and employee workdays, so the unilateral adoption of the calendar changed an existing working condition. This argument is well taken. It appears from the record in the instant case that when the school board adopted the student calendar, it unilaterally adopted a work calendar for the certificated staff.

The school board minutes covering the motion adopting the school calendar indicate that the moving board member said, "that it was a business necessity that the board adopt a calendar tonight" and that "[T]he students, parents, and teachers need in some degree to start planning their vacations and that they had delayed this decision long enough." The Board finds that the decision that had been "delayed" before included the adoption of a certificated calendar. Insertion of the word "student" calendar in place of "certificated" calendar in the school board's motion does not relieve the District of its bargaining obligation.

The intent of the school board can be further inferred from the District's February 23, 2000 press release, issued the day following the board meeting at which the calendar was adopted. The press release is titled "SCHOOL CALENDAR ADOPTED." The press release states that the Board of Education voted to approve the 2000-2001 school calendar, listing the first and last day of school, and listing legal holidays and district holidays. The press release also stated that, "[T]he schedule of non-student, teacher workdays is yet to be determined." The Board infers from this statement and the record that conversely, the schedule of student, teacher workdays was determined by the District's action in adopting the calendar.

The Board agent based the dismissal on Compton, stating that in this case, as in Compton, the District explicitly stated that the calendar did not set teacher workdays.² The instant case is distinguishable from Compton. In Compton, the calendar was tentative and subject to negotiations; in the instant case, there is no indication the calendar was tentative. To the contrary, the record in this case suggests that the work calendar was final. In Compton, the Board found that the calendar that was adopted was expressly identified as tentative and was

² The Board's decision in Compton was based on Lake Elsinore School District (1986) PERB Decision No. 606 (Lake Elsinore). In Lake Elsinore, the Board stated that an employer does not commit an unfair practice by unilaterally adopting a student (rather than an employee) calendar.

primarily a mechanism to facilitate the upcoming school year registration process. (Compton, p. 22.) In Compton, the schedule itself indicated that it was subject to change and the District described the work calendar as a "proposed calendar." Additionally, in Compton the Board also found that, the calendar "was alterable via the negotiation process."

By contrast, the record in the instant case does not indicate the school calendar unilaterally adopted by the District was only a tentative calendar or that it was subject to negotiations with PFT. The District's press release provides that, "The schedule of non-student, teacher workdays is yet to be determined." This language implies the District's intent that the work calendar, with respect to the days covered by the student calendar, would not be negotiable.

Based on the above analysis, the Board concludes that the District's unilateral adoption of the calendar was intended to be a final work calendar, indicating a refusal to bargain in derogation of the District's bargaining obligation. Because the record is not clear as to whether the District had a justification for unilaterally adopting the work calendar, we cannot make a ruling which would fully dispense with this matter. It must be remanded to the General Counsel's office for issuance of a complaint so that the parties may completely develop the record.

ORDER

The Board REVERSES the Board agent's dismissal in Case No. LA-CE-4169-E and REMANDS the case to the General Counsel's office for issuance of a complaint and further processing consistent with this Decision.

Members Amador and Whitehead joined in this Decision.