



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

TEAMSTERS LOCAL 2010,

Charging Party,

v.

REGENTS OF THE UNIVERSITY OF  
CALIFORNIA,

Respondent.

Case No. SF-CE-1234-H

PERB Decision No. 2699-H

February 27, 2020

Appearance: Beeson, Tayer & Bodine by Susan K. Garea, Attorney, for Teamsters Local 2010.

Before Banks, Shiners, and Krantz, Members.

**DECISION**

SHINERS, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Teamsters Local 2010 (Teamsters) from the Office of the General Counsel's (OGC) partial dismissal of its unfair practice charge against the Regents of the University of California (University). The charge, as amended, alleged that during Teamsters' campaign to organize the University's administrative professional employees, the University disseminated communications to those employees about the consequences of union membership. The amended charge alleged that the University's conduct deterred or discouraged employees from becoming Teamsters members, in violation of the Prohibition on Public Employers

Deterring or Discouraging Union Membership (PEDD).<sup>1</sup> It also alleged that this same conduct interfered with employees' rights under section 3565 of the Higher Education Employer-Employee Relations Act (HEERA) to "form, join and participate in the activities of employee organizations of their own choosing," in violation of HEERA section 3571, subdivision (a).<sup>2</sup>

OGC issued a complaint alleging that the University's conduct violated the PEDD but dismissed the alleged HEERA violation on the ground that Teamsters lacked standing to allege a violation of section 3571, subdivision (a) because the rights protected by that subdivision are granted to employees, not to employee organizations.

Based on our review of the entire case file and applicable precedent in light of Teamsters' appeal,<sup>3</sup> we reverse the partial dismissal and remand this case to OGC for issuance of a complaint alleging that the University's conduct violated HEERA section 3571, subdivision (a).

#### PARTIAL WARNING AND DISMISSAL LETTERS

OGC's partial warning letter began by noting that HEERA does not grant employee organizations an independent right to represent employees, and therefore the University's communications can only be alleged to violate employees' rights protected by HEERA section 3571, subdivision (a). The letter then found that

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<sup>1</sup> The PEDD is codified at Government Code section 3550 et seq. Unless otherwise specified, all statutory references herein are to the Government Code.

<sup>2</sup> HEERA is codified at section 3560 et seq.

<sup>3</sup> The University did not file a statement in opposition to the appeal.

Teamsters does not meet the statutory definition of “higher education employee.”<sup>4</sup> The letter further observed that, although PERB has permitted exclusive representatives to file charges under HEERA alleging violations of their members’ rights, Teamsters is not yet an exclusive representative of the employees whose rights are alleged to have been violated by the University. The letter concluded by informing Teamsters that unless the charge was amended to name a charging party with standing, i.e., one who meets the statutory definition of “higher education employee,” the interference allegation would be dismissed.

Teamsters’ first amended charge did not seek to add any additional charging parties. Rather, it included argument as to why Teamsters has standing to allege that the University interfered with employees’ rights. The University did not file a position statement in response to the first amended charge.

On November 12, 2019, OGC dismissed the interference allegation, concluding: “Because the only rights ‘conferred’ by HEERA here are those protecting individual employees’ rights, Teamsters does not have standing to bring those claims.” Teamsters filed a timely appeal of the partial dismissal.

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<sup>4</sup> HEERA section 3562, subdivision (e) provides in pertinent part:

“‘Employee’ or ‘higher education employee’ means any employee, including student employees whose employment is contingent on their status as students, of the Regents of the University of California, the Directors of the Hastings College of the Law, or the Trustees of the California State University.”

## DISCUSSION

When the Board decides an appeal of a dismissal, it applies a de novo standard of review and is free to reach different legal determinations than those in the dismissal. (*County of Monterey* (2018) PERB Decision No. 2579-M, p. 7; *Beverly Hills Unified School District* (2008) PERB Decision No. 1969, pp. 7-8.) In dismissing the allegation that the University's communications interfered with employee rights in violation of HEERA section 3571, subdivision (a), OGC concluded that Teamsters lacked standing to assert such an allegation because subdivision (a) protects only employee rights, not those of employee organizations. We disagree with OGC's legal analysis and conclusions, and hold that under HEERA an employee organization that has not been certified as an exclusive representative has standing to allege violations of the rights of employees it represents.

PERB Regulation 32602, subdivision (b) provides that, subject to exceptions not relevant here, "unfair practice charges may be filed by an employee, employee organization, or employer against an employee organization or employer."<sup>5</sup> This regulation "confers standing upon a person and/or entity to allege a particular unfair practice, depending upon the rights conferred by the statute." (*City of Livermore*

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<sup>5</sup> PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. It is undisputed that Teamsters satisfies the definition of "employee organization" under HEERA section 3562, subdivision (f)(1), which provides in relevant part:

"Employee organization' means any organization of any kind in which higher education employees participate and that exists for the purpose, in whole or in part, of dealing with higher education employers concerning grievances, labor disputes, wages, hours, and other terms and conditions of employment of employees."

(2017) PERB Decision No. 2525-M, p. 8.) For example, because the statutory duty to meet and confer in good faith is owed only between exclusive representatives and employers, PERB has held that individual employees lack standing to allege an employer failed to bargain in good faith. (See, e.g., *City of Inglewood* (2015) PERB Decision No. 2424-M, pp. 7-9; *Oxnard School District* (1988) PERB Decision No. 667, pp. 8-10.) Similarly, individual employees lack standing to allege violations of employee organizations' statutory rights. (*State of California (Department of Corrections)* (1993) PERB Decision No. 972-S, p. 3.)

Our analysis of whether Teamsters has standing thus necessarily begins with the statutory rights at issue. HEERA section 3571, subdivision (a) makes it unlawful for a higher education employer to “[i]mpose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.” Among the rights granted to employees under HEERA is “the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations and for the purpose of meeting and conferring.” (HEERA, § 3565.)

Subdivision (b) of section 3571 makes it unlawful for a higher education employer to “[d]eny to employee organizations rights guaranteed to them by this chapter.” Unlike the other statutes administered by PERB, HEERA does not grant employee organizations an independent right to represent employees in their

employment relations with their employer. (*Regents of the University of California v. PERB* (1985) 168 Cal.App.3d 937, 944 (*Regents*.)

In *Regents*, the Court of Appeal reviewed a Board decision which held that an employee organization not certified as an exclusive representative, i.e., a nonexclusive representative, was entitled to “advance notice of proposed changes in employment terms and conditions.” (*Regents, supra*, 168 Cal.App.3d at pp. 939-940.) The Court reversed, holding that because HEERA does not grant employee organizations an independent right to represent employees, the employer had no obligation to provide the nonexclusive representative with advance notice or the opportunity to discuss changes in working conditions before implementing them. (*Id.* at pp. 945-946.)

The Court observed, however, that the lack of an independent statutory right to represent employees does not render a nonexclusive representative powerless, but merely shifts the initiative for representation to the employee. (*Regents, supra*, 168 Cal.App.3d at p. 945.) Thus, on the facts presented in *Regents*, employees could exercise their right to be represented by an employee organization of their choice through having the nonexclusive representative meet with the employer on their behalf about proposed changes in working conditions. (*Ibid.*) The Court concluded that “[t]he rights of the nonexclusive employee organizations, to the extent they exist, are derivative; *they are the rights of an agent or representative of the employee.*” (*Ibid.*, italics added.)

Although the partial dismissal recognized the legal foundation for the holding in *Regents*, viz., that HEERA lacks an independent grant of representation rights to

employee organizations, it failed to consider the Court’s observation that a nonexclusive representative—like Teamsters in this case—has the ability to assert employees’ rights on their behalf. (See *Trustees of the California State University* (2014) PERB Decision No. 2384-H, p. 23, fn. 19 [noting that because of the lack of a statutory right to represent employees “under HEERA, conduct that would violate employee organizational rights to represent employees . . . under the other PERB-administered statutes must be alleged not as a violation of HEERA section 3571, subd. (b), but as . . . interference *with the rights of employees to be represented* [under] HEERA[ section] 3571, subd. (a)”].) Indeed, as the *Regents* Court noted, such an ability is necessary to allow employees to fully exercise their statutory right to be represented by the employee organization of their choice. (*Regents, supra*, 168 Cal.App.3d at p. 945.)

Additionally, as the partial dismissal noted, PERB has long allowed exclusive representatives to file charges alleging section 3571, subdivision (a) violations. (See, e.g., *Trustees of the California State University* (2017) PERB Decision No. 2522-H, pp. 7-17; *Regents of the University of California* (2007) PERB Decision No. 1912-H, p. 2.) As HEERA grants employees the right to be represented by “*employee organizations of their own choosing*” (HEERA, § 3565, italics added), we find no basis in the statute to limit standing to allege section 3571, subdivision (a) violations to exclusive representatives.<sup>6</sup> (Cf. *County of San Bernardino* (2018) PERB Decision

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<sup>6</sup> Although standing was not raised as an issue in the case, we note that in *Regents of the University of California (Irvine)* (2016) PERB Decision No. 2493-H, which involved an allegation that the University violated section 3571, subdivision (a) by dismissing a union organizer, the charging party was a nonexclusive representative.

No. 2556-M, pp. 17-19 [finding no distinction between exclusive and nonexclusive representatives for purposes of access rights to an employer's premises, and noting that such rights are necessary to effectuate employees' statutory right to be represented by an employee organization of their choice].)

Finally, allowing a nonexclusive representative to assert the rights of employees is particularly important during an organizing campaign. While individual employees clearly have standing to allege that an employer's conduct interfered with their right to organize, they may be unable or unwilling to file an unfair practice charge—assuming, of course, they are aware of their rights in the first place and of PERB's role in enforcing those rights. This, in turn, would leave HEERA-covered employees more vulnerable than other public employees to coercion by their employer during an organizing campaign, with the nonexclusive representative able to allege employer interference with the campaign only if it ultimately becomes the exclusive representative. Admittedly, the nonexclusive representative could name an individual employee as a charging party, as OGC demanded here. But we see no reason to force a nonexclusive representative to do so when it has the legal authority to act as employees' representative. Therefore, in accord with *Regents*, we hold that a nonexclusive representative has standing to allege violations of the rights of employees it represents.



ORDER

The Board REVERSES the partial dismissal in Case No. SF-CE-1234-H and REMANDS the case to the Office of the General Counsel for issuance of a complaint consistent with this Decision.

Members Banks and Krantz joined in this Decision.