STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ASSOCIATION OF CALIFORNIA STATE ATTORNEYS AND HEARING OFFICERS,	)	
Charging Party,	)	Case No. S-CE-22-S
v.	)	PERB Decision No. 229-S
STATE OF CALIFORNIA (FRANCHISE TAX BOARD),	)	July 29, 1982
Respondent.	)	

Appearances: Paul J. Petrozzi and Edward L. Faunce, Attorneys, for the Association of California State Attorneys and Hearing Officers; Barbara T. Stuart, Attorney (Department of Personnel Administration) for the State of California, Franchise Tax Board.

Before Gluck, Chairperson; Jensen and Jaeger, Members.

DECISION

This case is before the Public Employment Relations Board (hereafter PERB or Board) on exceptions filed by the Association of California State Attorneys and Hearing Officers (hereafter ACSA), and a response to those exceptions filed by the State of California (Franchise Tax Board) (hereafter the State or FTB). The proposed decision of the hearing officer is incorporated by reference herein. ACSA alleged initially that the FTB unilaterally altered its parking policy in violation of subsection 3519(b) of the State Employer-Employee Relations Act (hereafter SEERA), and amended its charge at the hearing to include the allegation that FTB discriminatorily granted

preferential parking privileges exclusively to incumbents of job classifications exempt from SEERA coverage in violation of subsection 3519(a).[1] The hearing officer dismissed the allegations in their entirety. For the reasons set forth infra, we affirm the result arrived at by the hearing officer.

FACTS

The hearing officer's findings of fact are free of prejudicial error and were not specifically excepted to. We adopt them as the findings of the Board as summarized and modified infra.

In 1971, the FTB moved its offices from downtown Sacramento to the Aerojet facility approximately 20 miles away. At Aerojet, free parking was and is available for all employees. There are certain spaces immediately adjacent to the building housing the FTB offices, the perimeter spaces, which are

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[1]SEERA is codified at Government Code sections 3512 et seq. All statutory references are to the Government Code, unless specified otherwise. Subsections 3519(a) and (b) provide as follows:

> It shall be unlawful for the state to:
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> (a) Impose 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.
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.

assigned on a preferential basis. Other than these assigned spaces, parking is available on a "first come, first served" basis in the "west lot" and the "south lot." Until spring of 1980, when the allegedly violative parking policy changes were made, perimeter spaces were assigned to visitors, handicapped persons, state cars, and employees at the administrator I salary level and above. Under this practice, attorneys qualified for perimeter spaces. The practice described above was not written. In October of 1978, Pan Gee became manager of business services at FTB. The absence of a written parking policy and the increase in numbers of handicapped persons motivated Gee and FTB management to develop a formal parking plan.

The attorneys and other members of FTB staff began to hear rumors regarding a change in parking policy in mid-to-late 1979. Attorneys discussed the rumors among themselves during this time period, particularly because it appeared that they might lose their perimeter parking privileges under the new plan. On about October 22, 1979, members of the legal staff saw a memorandum circulated over Pan Gee's signature which indicated that the parking policy was to be changed and that attorneys would lose their spaces. The attorneys sent a memo of protest to Legal Division Chief Bruce Walker, asking him to keep their concerns in mind when discussing the proposed changes in parking policy. Walker responded to staff

attorneys, by memo, and indicated his position. The attorneys, in turn, responded to Walker on December 4, 1979, indicating that they had seen a copy of the complete new parking plan (referenced herein as Policy File 5030) and suggesting that he request perimeter parking for them based upon their need to park close to the facility because of their alleged frequent travel and irregular working hours.

At all pertinent times herein, the attorneys at FTB were represented by ACSA on a nonexclusive basis. Paul Petrozzi acted as the unit representative of ACSA for FTB's attorneys. He testified that the attorneys resolved to wait until a parking policy was adopted and to then request a meet and confer session regarding it. Petrozzi stated that he and the other attorneys were unclear as to what course to follow under SEERA.

Sometime during late February or early March of 1980, Walker advised the attorneys that the new parking policy was set for adoption, and that it would cause certain of the attorneys to lose their perimeter parking. Soon thereafter, Petrozzi went to the next regularly scheduled ACSA meeting and requested funds to hire an attorney to file an unfair practice charge and/or take whatever other steps were deemed appropriate. On March 14, 1980, Frank Evans, ACSA president, sent a letter to FTB Acting Executive Officer William G. Mackey requesting a meeting so that FTB could ". . . explain the

reasons for the decision . . ." to deprive attorneys of their parking spaces.

On March 27, 1980, a meeting was held regarding the parking policy. Present for ACSA was Paul Petrozzi; present for management were Linda Boerlin, FTB assistant labor relations officer, and R. L. Smith, FTB chief of program services division. Boerlin did the talking on behalf of management, and Smith acted as an observer. Boerlin had authority to commit FTB management to alter the parking policy pursuant to that meeting, although the record is unclear as to whether she told Petrozzi of that authority.

Petrozzi began the meeting by presenting ACSA's arguments in favor of attorneys retaining their parking prvileges. Boerlin responded to the concerns raised by Petrozzi. A give-and-take discussion ensued. The meeting lasted approximately 45 minutes. Boerlin took notes regarding the meeting. At its conclusion, she informed Petrozzi that she would prepare a memo which would summarize the meeting, and give management's decision on the issues raised by Petrozzi. That memo was transmitted to Petrozzi on April 8, 1980.

Management's decision as a result of the meeting was not to alter Policy File 5030, dated March 20, 1980.

The new policy resulted in assignment of perimeter spaces in the following categories: visitors/vendors; handicapped; disabled; state cars; and certain job classifications including

managerial, confidential, and high-level supervisory categories. Spaces were assigned by classification or job description, rather than individuals. It was concluded, as a result of many meetings and discussions during the period from October of 1978 through May of 1980 that there was no overriding need on the part of any employment classification for a perimeter space. All but 88 of the 177 perimeter spaces went to visitors/vendors, handicapped and disabled persons, and state cars, in keeping with priorities set forth in the State's comprehensive agency parking plan. The remaining 88 spaces were distributed, as noted above, to managerial, confidential, and high-level supervisory personnel. Given the limited and nonexpanding number of such spaces, it was determined that they should be distributed to classifications which were not expanding in number.

On April 17, 1980, seventeen attorneys (those not at the managerial level) were informed that they should vacate their perimeter spaces as of May 1, 1980. Also displaced were four auditors, three data processors, one collections employee, three administrator I's, and four clerical supervisors.

The difference between the perimeter parking and readily available free parking is extremely slight. An affected attorney who parked in the most remote space in the south or west lot would be required to walk, at most, an additional 459 feet from his or her car to the building entrance.

DISCUSSION

I. The Alleged Failure to Meet and Discuss

In Professional Engineers in California Government (PECG) (3/19/80) PERB Decision No. 118-S, the Board held that, prior to selection of an exclusive representative, the state employer owes to nonexclusive representatives an obligation to meet and discuss subjects ". . . basic to the employment relationship . . ." prior to making changes regarding them. The Board made it clear that it did not purport by that decision to fully define the range of matters which are so basic to the employment relationship that they must be discussed with nonexclusive representatives.

The hearing officer concluded, based upon analysis of private sector and Meyers-Milias-Brown precedent, that the assignment of perimeter parking herein was not so basic to the employment relationship as to trigger the employer's PECG obligation to meet and discuss. We find that it is not necessary to reach that issue. This is so because, even assuming arguendo that the employer had a duty to provide a reasonable opportunity to ACSA to meet and discuss the parking policy involved herein with the employer prior to reaching or taking action on the new parking policy, we find that FTB complied with that duty.

It is clear from the record that the affected employees had actual notice of the contemplated changes in the parking policy

long before its implementation, and long before ACSA's request for meeting and discussion. Upon request, FTB immediately provided a meeting, giving ACSA full opportunity to present its alternatives to FTB's proposal and the rationale therefor. FTB's representative at that meeting had authority to present FTB's position, and even to alter that position if persuaded by ACSA to do so. FTB then followed up on the discussion with a full memorandum recounting the details of the meeting and setting forth management's decision on the parking policy.

As we stated in PECG, supra, at pp. 9-10:

> We stress, however, that the obligation imposed on the state employer to meet with a nonexclusive representative is not the same as that imposed with regard to an exclusive representative. Thus, whereas the Governor and representatives of recognized or certified employee organizations "have the mutual obligation personally to meet and confer [in good faith] promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation . . . (Section 3517)" the Board finds that the obligation imposed by the statute on the state employer with respect to nonexclusive representatives is to provide a reasonable opportunity to meet and discuss wages with them prior to the time the employer reaches or takes action on a policy decision.

In the circumstances here presented, we find that FTB met its obligation by providing ACSA with a reasonable opportunity

to meet and discuss the parking policy prior to finally implementing it.[2]

II. The Allegedly Discriminatory Assignment of Perimeter Parking

ACSA amended its charge at the hearing to encompass a subsection 3519(a) violation, the gravamen of which is that FTB selected the job classifications which would receive perimeter parking on the basis that they were exempt from SEERA coverage, with the intent to discriminate against persons covered by SEERA.

The factual record in this case belies the contention that only persons exempt from SEERA coverage received perimeter parking. Twenty-six classifications designated supervisory received perimeter parking under the new plan. Supervisory employees are expressly covered by and have extensive rights

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[2]The hearing officer held that the record did not establish that ACSA made a request for meeting and discussion upon the Governor or his representative because FTB was not shown to be the Governor's designated representative for meeting and conferring pursuant to subsection 3513(i). She found that this failure on ACSA's part constituted a further basis for dismissal of the subsection 3519(b) violation. We disavow that finding. FTB held itself out as the proper representative, and the State never contended that ACSA failed to request a meeting with the proper entity. Under these circumstances, we would not find that ACSA failed to request a meeting with the statutorily defined entity, and disavow that finding by the hearing officer.

under SEERA.[3] Further, not all persons displaced from preferential parking were members of the attorneys unit, nor were they all shown to be represented by ACSA. The record thus

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[3]SEERA sections 3522.3, 3522.4, 3522.5 and 3522.6 provide as follows:

> Section 3522.3 states:
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> Supervisory employees shall have 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 supervisory employee-employer relations as set forth in Section 3522.6. Supervisory employees also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the public employer.
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> Section 3522.4 states:
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> Employee organizations shall have the right to represent their supervisory employee members in their employment relations, including grievances, with the employer. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of employees from membership. Nothing in this section shall prohibit any employee from appearing on his or her own behalf or through his or her chosen representative in his or her employment relations and grievances with the public employer.
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> Section 3522.5 states:
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> The scope of representation for supervisory employees shall include all matters relating

does not reflect a pattern of displacing ACSA-represented persons in particular or persons represented by employee organizations in general.

We need not decide whether discrimination soley on the basis of SEERA-covered status, (as opposed to exercise of SEERA-protected rights) could constitute a violation of subsection 3519(a), because the facts of this case do not indicate that FTB selected classifications for preferential parking strictly along SEERA-coverage lines. Further, there is no evidence from which we could conclude that exercise of SEERA rights by any group of employees motivated the FTB to select the positions it selected for preferential parking.

In Novato Unified School District (4/30/82) PERB Decision No. 210, the Board clarified the test for violations of

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> to employment conditions and supervisory employee-employer relations including wages, hours, and other terms and conditions of employment.
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> Section 3522.6 states:
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> Upon request, the state shall meet and confer with employee organizations representing supervisory employees. "Meet and confer" means that they shall consider as fully as the employer deems reasonable such presentation as are made by the employee organization on behalf of its supervisory members prior to arriving at a determination of policy or course of action.

subsection 3543.5(a) of the Educational Employment Relations Act (hereafter EERA)[4] in cases in which it is alleged that the employer had taken adverse personnel action against employees in retaliation for protected activity. Stated simply, charging parties must demonstrate that the employer would not have so acted but-for employee participation in protected activity. In State of California (Department of Developmental Services) (7/28/82) PERB Decision No. 228-S, the Board held that the same test is applicable to such cases arising under subsection 3519(a) of SEERA.

ACSA has failed to provide any evidence that, but for attorneys' participation in protected activity, the State would not have changed the assignment of perimeter parking spaces. The totality of the evidence produced fails to support an inference of unlawful motivation on the part of the State.

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[4]EERA is codified at Government Code section 3540 et seq. Subsection 3543.5(a) provides as follows:

> It shall be unlawful for a public school employer to:
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> (a) Impose 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.

Thus, we conclude that no subsection 3519(a) violation has been proven. Novato, supra.

ORDER

Upon the foregoing facts, conclusions of law, and the entire record in this case, the Public Employment Relations Board ORDERS that the unfair practice charges filed by the Association of California State Attorneys and Hearing Officers against the State of California (Franchise Tax Board) is hereby DISMISSED.

By: Virgil Jensen, Member

Harry Gluck, Chairperson

John Jaeger, Member