

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



BONNIE H. AKE,)	
)	
Charging Party,)	Case No. LA-CO-117
)	
v.)	
)	
SIMI EDUCATORS ASSOCIATION,)	
)	
Respondent.)	PERB Decision No. 315
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)	May 27, 1983
GENEVA M. PRINGLE,)	
)	
Charging Party,)	Case No. LA-CO-118
)	
v.)	
)	
SIMI EDUCATORS ASSOCIATION,)	
)	
Respondent.)	
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Appearances: David T. Bryant, Attorney (National Right to Work Legal Defense Foundation, Inc.) for Bonnie H. Ake and Geneva M. Pringle; Michael R. White, Attorney for Simi Educators Association.

Before Gluck, Chairperson; Jaeger and Morgenstern, Members.

DECISION

MORGENSTERN, Member: These consolidated cases are before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Simi Educators Association (Association) and a response filed by Bonnie H. Ake and Geneva M. Pringle {Charging Parties) to a hearing officer's proposed decision.

The Charging Parties, who are not members of the Association, filed identical charges alleging that they had a right to pay service fees to the Association "monthly by check" and that the Association unlawfully demanded that they "either sign a check-off authorization or pay an entire years' dues [sic] in advance." The hearing officer found that the Association's practices regarding the collection of Association dues and service fees discriminated against Charging Parties in violation of subsection 3543.6(b) of the Educational Employment Relations Act (EERA or Act).¹

The Association excepts to the hearing officer's reasoning, conclusion and ordered remedy. Charging Parties filed no exceptions. However, in their response to the Association's exceptions, Charging Parties reassert the substance of their original charge.²

¹EERA is codified at Government Code section 3540 et seq. All statutory references are to the Government Code unless otherwise specified.

Section 3543.6 provides, in pertinent part, as follows:

It shall be unlawful for an employee organization to:

.....

(b) 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.

²Charging Parties' response is tantamount to an exception. As such, it was untimely under PERB regulation

After a review of the record and the arguments on appeal, the Board reverses the hearing officer's proposed decision and dismisses the charges for the reasons set forth below.

FACTS

The case was submitted on documentary evidence and stipulated facts which are summarized, in pertinent part, below.

Effective July 1, 1979, the Simi Valley Unified School District (District) and the Association agreed to an organizational security provision which, in pertinent part, provides as follows:

SERVICE FEES

Employees in the bargaining unit who are not members of the Association on the effective date of this agreement and members who hereafter come into the bargaining unit shall either within thirty days of this agreement [or] their employment apply for membership, or execute an authorization for service fee deduction, or complete a Religious Conviction Form.

The service fee shall be an amount of money identical to that paid as dues by Association members (SEA/CTA/NEA). The District, upon written authorization, shall deduct the service fee on a tenthly basis, September through June, annually.

32300 et seq. (California Administrative Code, title 8, section 32300), in effect at all times relevant to this case. See South Bay Elementary School District (4/30/82) PERB Decision No. 207, note 6.

However, we note that effective September 20, 1982, regulation 32310 was amended to provide: ". . . The response may contain a statement of any exceptions the responding party wishes to take to the recommended decision. . . ." The regulation, as amended, would render Charging Parties' exceptions timely.

If an employee in the bargaining unit belongs to a recognized religious organization, prior to coming under this agreement, whose basic tenets are counter to its members paying fees or joining a union type organization, he/she may complete the Religious Conviction Form.

The Association agrees that the District will withhold \$2.00 per person per year from the dues deductions and/or service fees for the administrative cost of implementing this article.

NON-COMPLIANCE CLAUSE

In the event an employee within the unit does not submit to the District a Dues Deduction Form, or a Religious Conviction Form, within 30 days from the signing of this contract or employment with the District, the Association is authorized to request Board action to initiate termination proceedings of such employee in accordance with this agreement, recognizing the failure of such employee to comply with this provision shall be reasonable cause for discharge.

The bylaws of the Association provide that all certificated personnel employed in the District may become members of the Association upon payment of the annual dues, that members may pay their dues by payroll deductions or by cash, and that the membership year is September 1 through August 31.

The parties jointly stipulated that if a member of the Association does not pay dues by payroll deduction (check-off), he or she is required to pay the entire year's dues in advance in cash or by check by September 1. Some members are not on check-off, and they pay a year's dues in cash or by check on or about September 1 of each year.

The parties further stipulated that the Association does not accept installment dues payments by check from members or

service fee payors. The only acceptable methods of payment recognized by the Association are either (1) payment of the entire year's dues or service fee in advance in cash or by check, by September 1, or (2) payment through authorization of payroll deduction. The payroll deduction method of payment provides for remittance of one-tenth of the entire year's dues or service fee to the Association from the District each pay period, September-June, inclusive.

Beginning in September 1979 and for certain months thereafter, Charging Parties tendered by check a portion of the yearly service fees to the Association. The Association accepted and cashed Charging Parties' checks, but by letters dated October 2, 1979 and December 31, 1979, requested that they either pay the balance of the year's fees in advance or sign payroll authorizations.

As of the date the stipulation was submitted, the total amount of service fees due from Charging Parties had been paid.

DISCUSSION

The Association's exceptions to the hearing officer's proposed decision are well taken. The hearing officer found that the Association discriminated against Charging Parties by providing in its bylaws that Association members could pay membership dues annually by lump sum in advance, as an alternative to payment by monthly payroll deduction. Since Association bylaws are not binding on nonmembers, the hearing

officer found that nonmembers have fewer payment options than do members and rejected the parties' joint stipulation that, in practice, both members and nonmembers are afforded the same two payment options. The hearing officer relied on Bagnall v. Airline Pilots Association (1980) 626 F.2d 336 [104 LRRM 2769].

The hearing officer's analysis is in error. First, we see no reason why the parties' stipulation as to actual practice should be rejected.³ We, therefore, expressly disavow the hearing officer's purported rejection of this stipulation. Secondly, this stipulation clearly indicates that, in actual practice, the Association accepted annual payment in advance from both members and nonmembers and, therefore, did not discriminate against nonmembers. Thirdly, in any event, the existence or nonexistence of a practice of accepting annual payment is immaterial to Charging Parties' allegations that a payroll deduction is unlawful and that they have a right to pay service fees monthly by check. Finally, the hearing officer misconstrued Bagnall, supra.

³No basis for rejection of the stipulation exists since the stipulation is not controverted by the record; it pertains to a matter of fact, not the ultimate conclusion of law before the Board; and it does not contravene the Act or consistent policies of the Board. See Hartnell Community College District (1/2/79) PERB Decision No. 81; Centinela Valley Union High School District (8/7/78) PERB Decision No. 62.

Though both Hartnell, supra, and Centinela Valley, supra, concern stipulations regarding representational questions, we find no reason to apply a different rule here.

In that case, the organizational security provisions at issue authorized only "monthly" dues, The court held that the union could not further regulate a nonmember's method of payment. Therefore, the union could not require annual dues and could not impose an interest charge in addition to monthly payments. Thus, Bagnall stands for the proposition that the obligations of a nonmember with respect to the payment of service fees are established by the terms of the negotiated agreement.

Similarly, the California Supreme Court has considered organizational security provisions negotiated pursuant to EERA and has held that "a member of a bargaining unit is bound by the terms of a valid collective bargaining agreement, though he is not formally a party to it and may not even belong to the union which negotiated it," San Lorenzo Education Association v. Wilson (1982) 32 Cal.3d 841, 846; modified at 33 Cal.3d 399a.

Here, Charging Parties argue essentially that they should not be bound by the terms of the contract which require the payment of service fees by payroll deduction, but should be permitted to pay service fees monthly by check. We disagree.

"Organizational security" is expressly enumerated as a negotiable term and condition of employment within the scope of representation.⁴ Organizational security is defined in

⁴Section 3543.2 provides, in pertinent part, as follows:

- (a) The scope of representation shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment. "Terms and

subsection 3540.1(i)5 and, in order for an organizational security arrangement to be effective, compliance with the procedures specified in sections 3546 and 3546.3 is required.⁶

conditions of employment" mean health and welfare benefits . . . leave, transfer and reassignment policies, safety conditions of employment, class size, procedures to be used for the evaluation of employees, organizational security . . . , procedures for processing grievances . . . , and the layoff of probationary certificated school district employees (Emphasis added.)

⁵Section 3540.1 provides, in pertinent part, as follows:

{i) "Organizational security" means:

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(2) An arrangement that requires an employee, as a condition of continued employment, either to join the recognized or certified employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of such organization for the duration of the agreement, or a period of three years from the effective date of such agreement, whichever comes first.

⁶Section 3546 provides, in pertinent part, as follows:

(a) An organizational security arrangement, in order to be effective, must be agreed upon by both parties to the agreement. At the time the issue is being negotiated, the public school employer may require that the organizational security provision be severed from the remainder of the proposed agreement and cause the organizational security provision to be voted upon separately by all members in the appropriate negotiating unit, in accordance with rules and regulations promulgated by the board. Upon such a vote, the organizational security provision will become effective only if a majority of those

The Act neither authorizes nor prohibits any specific method of payment of service fees. The Board has previously

members of the negotiating unit voting approve the agreement. Such vote shall not be deemed to either ratify or defeat the remaining provisions of the proposed agreement.

(b) An organizational security arrangement which is in effect may be rescinded by majority vote of the employees in the negotiating unit covered by such arrangement in accordance with rules and regulations promulgated by the board.

Section 3546.3 provides, in pertinent part, as follows:

. . . [A]ny employee who is a member of a religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations shall not be required to join, maintain membership in, or financially support any employee organization as a condition of employment; except that such employee may be required, in lieu of a service fee, to pay sums equal to such service fee either to a nonreligious, nonlabor organization, charitable fund exempt from taxation under Section 501(c)(3) of Title 26 of the Internal Revenue Code, chosen by such employee from a list of at least three such funds, designated in the organizational security arrangement, or if the arrangement fails to designate such funds, then to any such fund chosen by the employee. Either the employee organization or the public school employer may require that proof of such payments be made on an annual basis to the public school employer as a condition of continued exemption from the requirement of financial support to the recognized employee organization. If such employee who holds conscientious objections pursuant to this section requests the employee organization to use the grievance procedure or arbitration procedure on the employee's behalf, the employee organization is authorized to charge the employee for the reasonable cost of using such procedure.

held that payroll deductions of service fees are lawful under the Act. King City Joint Union High School District (3/3/82) PERB Decision No. 197.7 There the Board considered an organizational security provision which required the district to withhold service fees without the prior written authorization of the payor. The Board majority stated as follows, at page 25:

Service fees . . . are mandatory if negotiated pursuant to the legislative authority found in EERA section 3546. Prior approval of the payor is not only unnecessary but inconsistent with the involuntary nature of such fees. Withholding approval would enable the nonmember to circumvent the legislative purpose and negotiated agreement.

The fact that the organizational security provision at issue here requires the written authorization of the payor does not alter the mandatory nature of the provision. To hold, as Charging Parties urge, that nonmembers can avoid the contract requirements and pay service fees in any manner they choose:

. . . would inevitably lead to unduly burdensome collection problems and ultimately to the wholesale enforcement of the employment termination provisions of section 3540.1(i), a consequence that would be detrimental to the educational system and to peaceful labor relations in the districts. (King City, supra, at p. 25.)

Moreover, the organizational security provision, by its terms, requires both Association members and nonmembers to

7Review pending, Civ. No. A016723.

execute an authorization for payroll deduction. Thus, the contract treats members and nonmembers in the same fashion and does not discriminate against nonmembers.

We, therefore, find that the contract provision requiring payroll deduction authorization is lawful under EERA. Further, contrary to Charging parties' contention, nothing in the Education Code renders this provision unlawful.

At the time this provision was agreed to and implemented, the Education Code was silent regarding the payment of service fees. Though the Legislature has subsequently amended the Education Code to provide for the payment of service fees either by payroll deduction or directly to the employee organization in lieu of payroll deductions, this amendment became effective on January 1, 1983, more than three years after the events complained of here.⁸ Inasmuch as nothing in

⁸Education Code section 45061 provides as follows;

Deductions for service fees as required by
organizational security arrangement

The governing board of each school district when drawing an order for the salary or wage payment due to a certificated employee of the district shall, with or without charge, reduce the order for the payment of service fees to the certified or recognized organization as required by an organizational security arrangement between the exclusive representative and a public school employer. . . . However, the organizational security arrangement shall provide that any employee may pay service

the legislation expressly declares that it is intended to have retroactive application, such application is not proper. (See California Civil Code section 3, California Code of Civil Procedure section 3).⁹

Additional authorities cited by Charging Parties, allegedly in support of their position, are inapposite.¹⁰ Therefore,

fees directly to the certified or recognized employee organization in lieu of having such service fees deducted from the salary or wage order.

If the employees of a district do not authorize the board to make a deduction to pay their pro rata share of the costs of making deductions for the payment of service fees to the certificated or recognized organization, the board shall deduct from the amount transmitted to the organization on whose account the payments were deducted the actual costs, if any, of making the deduction. No charge shall exceed the actual cost to the district of the deduction. These annual costs shall be determined by the board and shall include startup and ongoing costs. (AB 404, added by stats. 1982, ch. 1148, section 2.)

⁹As discussed, supra, the undisputed practice afforded nonmembers the option to pay service fees either by payroll deduction or directly to the Association by lump sum payment. We do not decide whether the requirements of Education Code section 45061, if applicable, would be satisfied either by such lump sum payment or by such practice not incorporated in the written collective bargaining agreement between the parties or any mutually agreed to modification thereof.

¹⁰California School Employees Association v. Solano Community College District Board or Trustees, et al., (Super. Ct. Solano Co., No. 69729) and 60 Ops. Cal. Atty. Gen. 370-374 (1977) both address the extent of a district's obligation to enforce an organizational security provision, a matter not at issue here.

we find that the contract requirement for payroll deduction authorization is lawful under EERA and the Education Code, that the provision is not discriminatory, and that the lawfulness of the provision is not affected by the Association's offer of an additional, voluntary and non-discriminatory payment option. We find no authority for Charging Parties' asserted right to pay service fees "monthly by check." Accordingly, the charges are dismissed.

ORDER

After a review of the entire record in this case, the Public Employment Relations Board ORDERS that the unfair practice charges in Case Nos. LA-CO-117 and LA-CO-118 are hereby DISMISSED.

Chairperson Gluck and Member Jaeger joined in this Decision.