

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ANN M. HALLIGAN ET AL..)
)
Charging Parties,) Case No. SF-CE-895
)
v.) PERB Decision No. 435
)
FREMONT UNIFIED SCHOOL DISTRICT.) November 21, 1984
)
Respondent.)
_____)

Appearances: David T. Bryant, Attorney for Ann M. Halligan et al.; Martha Buell Scott, Attorney for Fremont Unified School District.

Before Hesse. Chairperson; Jaeger and Morgenstern, Members.*

DECISION

This case is before the Public Employment Relations Board on an appeal by Ann M. Halligan et al. of the Board agent's dismissal, attached hereto, of their charge alleging that the Fremont Unified School District violated section 3543.5(a) of the Educational Employment Relations Act (Government Code section 3540 et seq.).

We have reviewed the dismissal and, finding it free from prejudicial error, adopt it as the Decision of the Board itself.

ORDER

The unfair practice charge in Case No. SF-CE-895 is
DISMISSED WITHOUT LEAVE TO AMEND.

By the Board

*Members Tovar and Burt did not participate in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, California 94108
(415) 557-1350



May 11, 1984

David T. Bryant
National Right to Work Legal
Defense Foundation, Inc.
8001 Braddock Road, Suite 600
Springfield, VA 22160

Martha Buell Scott

Re: REFUSAL TO ISSUE COMPLAINT AND DISMISSAL OF UNFAIR PRACTICE CHARGE
Ann M. Halligan, et al. v. Fremont Unified School District

Dear Parties:

Pursuant to Public Employment Relations Board (PERB) Regulation section 32620(5), a complaint will not be issued in the above-referenced case and the pending charge is hereby dismissed because it fails to allege facts sufficient to state a prima facie violation of the Educational Employment Relations Act (EERA).¹ The reasoning which underlies this decision follows.

On April 26, 1984, the regional attorney wrote to charging party pointing out the deficiencies of the charge as written and soliciting an amendment or withdrawal by May 7, 1984 (letter attached and incorporated by reference). The letter warned that if no such response was received by the deadline, the allegations would be dismissed and no complaint would issue.

On May 7, 1984, the regional attorney received a letter from Mr. David Bryant, attorney for charging party. It indicated receipt of the April 26, 1984 letter as well as acknowledged that on April 26, 1984 the Court of Appeal summarily dismissed a petition for Writ of Review filed in the case of John A. Broadwood, et al. v. FERB (1 Civil A-14552).² The regional attorney had cited Los Altos as authority for dismissing the instant charge if it were not withdrawn or amended.

¹References to the EERA are to Government Code sections 3540 et seq. PERB Regulations are codified at California Administrative Code, Title 8.

²Petitioner had challenged PERB's decision in Los Altos School District (Broadwood) (12/29/81) PERB Decision No. 1907.

David T. Bryant
Martha Buell Scott
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Pursuant to Public Employment Relations Board regulation section 32635 (California Administrative Code, title 8, part III), you may appeal the refusal to issue a complaint (dismissal) to the Board itself.

Right to Appeal

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 Notice (section 32535(a)). To be timely filed, the original and five (5) copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) on May 31, 1984, or sent by telegraph or certified United States mail postmarked not later than May 31, 1984 (section 32135). 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 (5) copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal (section 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 the document filed with the Board itself (see section 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 (section 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.

Very truly yours,

DENNIS M. SULLIVAN
General Counsel

By

PETER HABERFELD
Regional Attorney

cc: General Counsel

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, California 94108
(415) 557-1350



April 26, 1984

David T. Bryant
National Right to Work Legal
Defense Foundation
8001 Braddock Road, Suite 600
Springfield, VA 22160

Re: Ann M. Halligan, et al. v. Fremont Unified District, Charge No. SF-CE-895

Dear Mr. Bryant:

On April 9, 1984, charging parties' Ann M. Halligan, et al. filed an unfair practice charge against the Fremont Unified School District (District) alleging violation of EERA section 3543.5(a). More specifically, charging parties allege that the District entered into a collective bargaining agreement with the Fremont Unified District Teachers Association (Association) on December 14, 1983, made the organizational security provision of such agreement retroactive to July 1, 1983, and, pursuant to such agreement, deducted service fees from the salaries of charging parties for the period between July 1, 1983 and December 13, 1983. Charging parties allege that the District conduct interfered with their right not to participate in organizational activity as guaranteed by section 3543 of EERA.

EERB has held that an exclusive representative has authority under EERA to collect agency fees retroactively to the effective date of the recently-negotiated successor collective bargaining agreement. Los Altos Teachers Association (12/29/81) PERB Decision No. 190, rev. pend. (1 Civ. 54699)¹ Such fees may be deducted automatically from payroll, despite the absence of the non-member's consent. King City High School District (3/3/82) PERB Decision No. 197, rev. pend. (1 Civ. A016723).

The unfair practice charge, as presently written, fails to state a prima facie violation of section 3543.5(b). The District acted lawfully when it acceded to the request of the Association that it automatically deduct agency fee payments from charging parties' salaries retroactive to July 1, 1983, the date on which the agreement was first made effective. Accordingly, the allegations of the charge will be dismissed and no complaint will issue thereon.

¹Also see Berns v. Wisconsin Employment Relations Commission (Wisc.S.Ct. 1980) 1979-80 PEC, Par. 37111, affirming Berns v. WERC (Wisc.Ct. of App. 1979) 105 LRRM 2092.

If you feel that there are facts which would correct the deficiencies explained above, please amend the charge accordingly. 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. Please be sure to indicate the EERB charge number. The amended charge must be served on the respondent 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 7, 1984, I shall dismiss your charge. If you have any questions on how to proceed, please call me at (415) 557-1350.

Sincerely yours,

Peter Haberfeld
Regional Attorney