

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



DONNA AUSTIN, ET AL.,)
)
Charging Parties,) Case No. SF-CE-935
)
v.) PERB Decision No. 463
)
SAN JOSE UNIFIED SCHOOL DISTRICT,) December 13, 1984
)
Respondent.)
_____)

Appearances: David T. Bryant, Attorney for Donna Austin, et al.; Littler, Mendelson, Fastiff & Tichy by Richard J. Loftus, Jr. and Janice M. Jablonski for the San Jose Unified School District.

Before Hesse, Chairperson; Jaeger and Morgenstern, Members*

DECISION

This case is before the Public Employment Relations Board on exceptions filed by the Charging Parties to the Board agent's dismissal, attached hereto, of their unfair practice charge alleging that the San Jose Unified School District violated section 3543.5(a) of the Educational Employment Relations Act (Government Code section 3540 et seq.).

We have reviewed the Board agent's 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-935 is
DISMISSED WITHOUT LEAVE TO AMEND.

By the BOARD

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

PUBLIC EMPLOYMENT RELATIONS BOARD

Headquarters Office
1031 18th Street
Sacramento, California 95814
(916) 322-3088



September 18, 1984

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

Richard Loftus, Esq.
Littler, Mendelson, Fastiff & Tichy
111 Almaden Blvd., Suite 400
San Jose, CA 95113-2093

Re: REFUSAL TO ISSUE COMPLAINT AND DISMISSAL OF UNFAIR PRACTICE
CHARGE; Austin, et al. v. San Jose USD, SF-CE-935

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 charge alleges that the District violated the EERA by entering into a collective bargaining agreement with the Association which provided for automatic deduction of agency fees. The agency fee clause in question calls for collection of nonmember service fees in an amount not exceeding the amount of initiation fee, dues and general assessment.^{2/} These

^{1/}References to the EERA are to Government Code sections 3540 et seq. All section references are to the EERA unless otherwise indicated. PERB Regulations ("Board Rules") are codified at California Administrative Code, Title 8.

^{2/}The operative organizational security provision is reflected in two documents. First, a prior collective bargaining agreement between the parties (7/1/81 - 6/30/84) contains relevant provisions which were subsequently included in a successor agreement. The parties' agreement prescribed:

7500 Every teacher shall become a member of the Association or pay to the Association a service fee in an amount equal to unified membership

David Bryant
Richard Loftus
September 18, 1984
Page 2

fees, it is alleged, are passed on by the employer to the Association, which allegedly spends them for purposes to which the charging parties object.

Discussion

Any argument that the District conduct described above violated the Act must be rejected for the following reasons:

1. The validity of compulsory payments to labor organization has long been established. (Railway Employees Department v. Hanson (1956) 351 U.S. 225 [38 LRRM 2099]; International Association of Machinists v. Street (1960) 367 U.S. 740 [48 LRRM 2345]; Abood v. Detroit Board of Education (1977) 431 U.S. 209 [95 LRRM 2411]; Ellis, et al. v. Brotherhood of Railway, Airline and Steamship Clerks (4/25/84) ___ U.S. ___ [80 L.Ed.2d 428, 52 U.S.L.W. 4499].) Consistent with this principle, the EERA specifically permits collective bargaining agreements to include agency fee provisions requiring employees either to join the exclusive representative, or pay a service

dues, initiation fees, and general assessments payable to the Association.

7510 An employee may authorize payroll deduction for service fees in the same manner provided for in Section 7100 or make payment directly to the Association.

Second, a "Mediator's Comprehensive Settlement Agreement" ("Settlement Agreement") resolved designated disputes between the District and Association, including the parties' 1983/84 and 1984/85 collective bargaining agreement (Settlement Agreement, paragraphs 1.8 and 1.9). The Settlement Agreement (at p. 9) amended Article 7510 of the 1981/84 agreement to add the following:

Upon the written request of the Association, the District will deduct the amount of the service fee from the paycheck of any unit member who has not authorized a payroll deduction or paid directly to the Association. The Association will reimburse the District for the actual cost of payroll deductions made pursuant to 7510.

David Bryant
Richard Loftus
September 18, 1984
Page 3

fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments (sections 3546 and 3540.1(2)).

2. Employee organizations may violate the EERA when they spend objecting nonmembers' agency fees on activities which are unrelated to the exclusive representative's representational role. (King City Union High School District (3/3/82) PERB Decision No. 197; Abood, supra.) The employer, however, cannot be held responsible for the expenditures of the exclusive representative. Rather, agency fees, like membership dues, are a matter of internal organizational policy and concern:

The employer's interest in the subject is limited to its willingness to impose on its non-union employees an agency fee requirement and, if so, whether an authorization election [Gov. Code section 3546] is desired. (Fresno Unified School District (4/30/82) PERB Decision No. 208, at p. 21.)

Indeed, the Board has held an employer's insistence on a "cap" on agency fees constitutes an unlawful bargaining proposal. (Fresno, supra, at pp. 21-22.)

3. The Charging Party finds particular fault in the employer's implementation of automatic deduction of agency fees. Payroll deductions of agency fees, however, may be lawfully made without the permission of employees who are obligated under a collective bargaining agreement to pay such fees. The Board has observed that under the EERA,

Prior approval of the payor [for an agency fee deduction] 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. To provide involuntary payors with this option 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, p. 25.)

David Bryant
Richard Loftus
September 18, 1984
Page 4

Furthermore, the Education Code expressly provides that school district governing boards "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" (Education Code section 45061.) Accordingly, the automatic deduction clause in the parties' agreement does not contribute toward an unfair practice.

For the foregoing reasons, no complaint will issue and the charge is hereby DISMISSED.^{3/}

Pursuant to Board Rule 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 dismissal (Board Rule 32635(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 Tuesday, October 9, 1984, or sent by telegraph or certified United States mail postmarked not later than October 9, 1984 (Board Rule 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 (Board Rule 32635(b)).

^{3/}The Charging Party appears to argue that the District is a necessary party to the formulation of a meaningful remedial order against the Association. Even if this is true, however, it does not mean that the District has committed an unfair practice. Further, adequate procedural mechanisms are available to protect the charging party's interest. See, e.g., Board Rule 32164(d)(1).

David Bryant
Richard Loftus
September 18, 1984
Page 5

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 Board Rule 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 (Board Rule 32132).

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

JEFFREY SLOAN
Assistant General Counsel

Sac 8765b

