

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SERVICE EMPLOYEES INTERNATIONAL)
UNION, LOCAL 22,)
)
Charging Party,) Case No. S-CE-1491
)
v.) PERB Decision No. 952
)
SACRAMENTO CITY UNIFIED SCHOOL) September 10, 1992
DISTRICT,)
)
Respondent.)
_____)

Appearance: Ruth Holbrook, Union Representative, for Service Employees International Union, Local 22.

Before Hesse, Chairperson, Caffrey and Carlyle, Members.

DECISION AND ORDER

CARLYLE, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Service Employees International Union, Local 22 (SEIU) to a Board agent's dismissal, attached hereto, of its charge that the Sacramento City Unified School District (District) violated section 3543.5(b) of the Educational Employment Relations Act (EERA).¹ Specifically, it is alleged that the District violated EERA by

¹EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3543.5 states, in pertinent part:

It shall be unlawful for a public school employer to do any of the following:

(b) Deny to employee organizations rights guaranteed to them by this chapter.

intending to transfer bargaining unit work from Unit A, police officers, to Unit B, aides, paraprofessionals. The Board has reviewed the Board agent's warning and dismissal letters, and, finding them to be free of prejudicial error, adopts them as the decision of the Board itself.

On appeal, SEIU asserts that on June 30, 1992 the Board of Education passed the 1992-93 budget which included retaining three police officers and transferring the remainder of the police department's budget to the other unit.

PERB Regulation 32635(b) provides that:

Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence.

As SEIU has failed to show good cause for presenting new supporting evidence, the Board must reject the appeal.²

Therefore, the unfair practice charge in Case No. S-CE-1491 is hereby DISMISSED WITHOUT PREJUDICE.

Chairperson Hesse and Member Caffrey joined in this Decision.

²SEIU is not precluded from filing a new unfair practice charge based on new facts which occurred subsequent to the Board agent's dismissal of the unfair practice charge in this case.

PUBLIC EMPLOYMENT RELATIONS BOARD



Headquarters Office
1031 18th Street
Sacramento, CA 95814-4174
(916) 322-3088



June 19, 1992

Ruth Holbrook
Service Employees International Union
903 30th Street
Sacramento, CA 95816

Re: Service Employees International Union, Local 22 v.
Sacramento City Unified School District
Unfair Practice Charge No. S-CE-1491
DISMISSAL LETTER

Dear Ms. Holbrook:

On May 22, 1992, you filed the above-referenced charge against Sacramento City Unified School District alleging a violation of Government Code section 3543.5(b). Specifically, you alleged that the District violated the Educational Employment Relations Act "by showing the intention of transferring our bargaining unit work from unit A, police officers, to unit B, aides, paraprofessionals."

I indicated to you, in my attached letter dated June 11, 1992, that the above-referenced charge did not state a prima facie case. You were advised that, if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to June 18, 1992, the charge would be dismissed.

I have not received either an amended charge or a request for withdrawal. Therefore, I am dismissing the charge based on the facts and reasons contained in my June 11, 1992 letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, 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. (Cal. Code of Regs., tit. 8, sec. 32635(a).) To be timely filed, the original and five copies of such appeal must be actually received by the Board itself

before the close of business (5 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. (Cal. Code of Regs., tit. 8, sec. 32135.) Code of Civil Procedure section 1013 shall apply. 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 copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Cal. Code of Regs., tit. 8, sec. 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 each copy of a document served upon a party or filed with the Board itself. (See Cal. Code of Regs., tit. 8, sec. 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. (Cal. Code of Regs., tit. 8, sec. 32132.)

f

S-CE-1491

Page 3

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

JOHN W. SPITTLER
General Counsel

By
Bernard McMonigle
Regional Attorney

Attachment

cc: Ann Freers
Attorney
770 L Street, Suite 1200
Sacramento, CA 95814-3363

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916) 322-3198



June 11, 1992

Ruth Holbrook
Service Employees International Union
903 30th Street
Sacramento, CA 95816

Re: Service Employees International Union, Local 22 v.
Sacramento City Unified School District
Unfair Practice Charge No. S-CE-1491
WARNING LETTER

Dear Ms. Holbrook:

On May 22, 1992, you filed the above-referenced charge against Sacramento City Unified School District alleging a violation of Government Code section 3543.5(b). Specifically, you alleged that the District violated the Educational Employment Relations Act "by showing the intention of transferring our bargaining unit work from unit A, police officers, to unit B, aides, paraprofessionals." We discussed this charge by telephone on June 4 and 10.

In February 1992, the superintendent made certain budget proposals to the District's Board of Education. Among those proposals was the elimination of police officer positions with the School District. On May 6, 1992, the superintendent submitted a modified proposal which eliminated the 12 member police department. However, 50 percent of the funds which would have funded the police department would be retained to fund additional hall monitor positions or other safety positions. No proposals have yet been accepted by the Board. There is no firm budget.

You have indicated that there has traditionally been overlap of work done by campus police and hall monitors in that both groups have taken weapons from students, stopped fights, and removed nonstudents and disruptive students from campuses. You have further indicated that the hall monitors will now be asked to do some of the work which had traditionally been done by police officers. One example was searching students for drugs at a District high school. You also stated in our telephone

June 11, 1992

Page 2

conversation of June 4 that, after the District made the budget cuts on May 6, you requested that the District bargain regarding the effects of the layoff of the police officers. However, you indicated that you had not requested that the District bargain the decision or the effects regarding the transfer of bargaining unit work from the police officers' bargaining unit to the bargaining unit in which the hall monitors are represented. In our conversation of June 10, you indicated that you have mailed such a request to the District.

To demonstrate a violation of the obligation to bargain by making a unilateral change, the charging party must show that (1) the employer breached the written agreement or its own established past practice, (2) the employer acted without giving the exclusive representative notice or an opportunity to bargain, (3) the change in policy concerns a matter within the scope of representation and (4) the breach amounts to a change in policy. Grant Joint Union School District (1983) PERB Decision No. 196. You have not demonstrated that the employer has refused to bargain over the decision to transfer bargaining unit work nor have you demonstrated that the recent request will be futile because the employer has already made a firm decision. Accordingly, you have not demonstrated the elements necessary to establish an illegal unilateral change.

For these reasons, the charge as presently written does not state a prima facie case. If there are any factual inaccuracies in this letter or any additional facts that 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 must be signed under penalty of perjury by the charging party. 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 **June 18, 1992**, I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198.

Sincerely,

Bernard McMonigle
Regional Attorney