

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



UNITED EDUCATORS OF SAN FRANCISCO,)
)
 Charging Party,) Case No. SF-CE-1935
)
 v.) PERB Decision No. 1250
)
 SAN FRANCISCO UNIFIED SCHOOL) February 9, 1998
 DISTRICT,)
)
 Respondent.)
 _____)

Appearances: Van Bourg, Weinberg, Roger & Rosenfeld by Stewart Weinberg, Attorney, for United Educators of San Francisco; Breon, O'Donnell, Miller, Brown & Dannis by Claudia Madrigal, Attorney, for San Francisco Unified School District.

Before Caffrey, Chairman; Johnson and Amador, Members.

DECISION

Amador, Member: This case comes before the Public Employment Relations Board (Board) on appeal from a Board agent's dismissal (attached) of the United Educators of San Francisco's (UESF) unfair practice charge. As amended, the charge alleges that the San Francisco Unified School District (District) violated section 3543.5(a) of the Educational Employment Relations Act (EERA)¹ when it interfered with employee rights

¹EERA is codified at Government Code section 3540 et seq. Section 3543.5 provides, in relevant part:

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

(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. For purposes of

guaranteed by the EERA.

The Board has reviewed the entire record in this case, including UESF's original and amended unfair practice charge, the warning and dismissal letters, UESF's appeal, and the District's response thereto. The Board finds the warning and dismissal letters to be free from prejudicial error and adopts them as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. SF-CE-1935 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Johnson joined in this Decision.

this subdivision, "employee" includes an applicant for employment or reemployment.

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 439-6940



November 25, 1997

Stewart Weinberg
Van Bourg, Weinberg, Roger & Rosenfeld
180 Grand Avenue, Suite 1400
Oakland, California 94612

Re: **DISMISSAL OF UNFAIR PRACTICE CHARGE/REFUSAL TO ISSUE
COMPLAINT**

United Educators of San Francisco v. San Francisco Unified
School District

Unfair Practice Charge No. SF-CE-1935

Dear Mr. Weinberg:

The above-referenced unfair practice charge filed on March 31, 1997, alleges that the San Francisco Unified School District (District) engaged in intimidation and retaliation against employees participating in the activities of United Educators of San Francisco (UESF). This conduct is alleged to violate Government Code section 3543.5(a) of the Educational Employment Relations Act (EERA).

I indicated to you, in my attached letter dated November 12, 1997, that the above-referenced charge was subject to deferral to arbitration. 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 or withdrew it prior to November 20, 1997, it 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 November 12, 1997 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 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

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than the last date set for filing. (Cal. Code 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 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 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 Regs., tit. 8, sec. 32132.)

Final Date

If no appeal is filed within the specified time limits, the

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dismissal will become final when the time limits have expired.

Sincerely,

ROBERT THOMPSON
Deputy General Counsel

DONN Ginoza

Regional Attorney

Attachment

cc: Claudia Madrigal

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 439-6940



November 12, 1997

Stewart Weinberg
Van Bourg, Weinberg, Roger & Rosenfeld
180 Grand Avenue, Suite 1400
Oakland, California 94612

Re: **WARNING LETTER**
United Educators of San Francisco v. San Francisco Unified
School District
Unfair Practice Charge No. SF-CE-1935

Dear Mr. Weinberg:

The above-referenced unfair practice charge filed on March 31, 1997, alleges that the San Francisco Unified School District (District) engaged in intimidation and retaliation against employees participating in the activities of United Educators of San Francisco (UESF). This conduct is alleged to violate Government Code section 3543.5(a) of the Educational Employment Relations Act (EERA).

Investigation of the charge revealed the following. UESF is the exclusive representative of a unit of certificated employees in the District. In August of 1996, Mission High School was placed in the Comprehensive School Improvement Program (CSIP). The program places schools with low student test scores on probation. The probationary period culminates in an assessment of the entire school by the CSIP team. The team includes a number of District school administrators. Following the assessment, the school is either graduated from the program, remains on probation, or is reconstituted. If the school is reconstituted, employees at the site are transferred to different school sites.

Since the start of the 1996-97 academic year, a number of teachers at Mission High School have been actively organizing faculty members to oppose any involuntary transfer of teachers from Mission High School. This organization has been done with the knowledge, approval, and assistance of UESF. According to UESF, the reaction of the District, through its agents, has been to "attempt to intimidate, threaten and coerce employees . . . in an effort to cause them to cease to participate in the activities of [UESF] and other concerted activities."

The charge recounts a number of separate incidents suggesting a pattern of conduct intended to isolate individuals participating

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in UESF activities relative to the potential reconstitution of Mission High School Faculty. For example, the teachers' schedules were arranged so as to prevent union activists from having the same preparation period out of concern that they may use that time to consult with one another relative to their joint goals. The principal of Mission High School is alleged to have "unnecessarily and improperly reprimanded" a teacher in front of her class. The principal also appeared in the classroom of another union activist to conduct a classroom observation even though that teacher was not due to be formally evaluated at that time. Another teacher was reprimanded for allegedly unprofessional behavior "because of her alleged conduct at a meeting which she attended as a union building committee member." The principal notified a UESF representative that he would no longer be allowed to conduct his grievance meetings with teachers during the teacher's work day. Further, the principal has begun a practice of consistently refusing to reply to any grievance filed by UESF. The charge contains a number of other similar events involving other UESF activists.

The District and UESF are parties to a collective bargaining agreement containing a grievance procedure which culminates in binding arbitration. (Art. XIX, sec. 19.8.3.1.) The agreement defines a grievance as "a claimed violation, misinterpretation, or inequitable application of the terms and conditions of this agreement." (Art. XIX, sec. 19.2.) The grievance procedure does not contain any limitation on UESF's right to file a grievance on behalf of bargaining unit members. Further, article V, section 5.6 provides:

Non-discrimination -- Neither the District nor the Union shall discriminate against any officer or teacher of the District in violation of the law, on the basis of race, color, creed, age, sex, national origin, political affiliation, domicile, marital status, sexual orientation, handicapping condition, physical appearance, or membership or participation in the activities of a recognized teacher association.

Based on the facts stated above, the charge must be dismissed and deferred to arbitration for the reasons that follow.

Section 3541.5(a) of the Educational Employment Relations Act states, in pertinent part, that PERB shall not:

Issue a complaint against conduct also prohibited by the provisions of the

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[collective bargaining] agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted, either by settlement or binding arbitration.

In Lake Elsinore School District (1987) PERB Decision No. 646, PERB held that this section established a jurisdictional rule requiring that a charge be dismissed and deferred if: (1) the grievance machinery of the agreement covers the matter at issue and culminates in binding arbitration; and, (2) the conduct complained of in the unfair practice charge is prohibited by the provisions of the agreement between the parties. PERB Regulation 32620(b)(5) (Cal. Code of Regs., tit. 8, sec. 32620(b)(5)) also requires the investigating Board agent to dismiss a charge where the allegations are properly deferred to binding arbitration.

These standards are met with respect to this case. First, the grievance machinery of the parties' agreement covers the dispute raised by the unfair practice charge and culminates in binding arbitration. Second, the conduct complained of in this charge that the District engaged in activities designed to intimidate employees so as to cause them to cease their concerted activities within UESF is arguably prohibited by article V, section 5.6 of the agreement. The charge alleges that a pattern of events that involve retaliatory acts against the union activists. Although the charge possibly suggests an alternative theory involving interference, the language of article V, section 5.6 suggests no limitation that prohibit UESF from arguing such a theory. (See Carlsbad Unified School District (1979) PERB Decision No. 89. [discussing similarity between discrimination and interference].)

Accordingly, this charge must be deferred to arbitration and will be dismissed. Such dismissal is without prejudice to the Charging Party's right, after arbitration, to seek a repugnancy review by PERB of the arbitrator's decision under the Dry Creek criteria. (See PERB Reg. 32661 [Cal. Code of Regs., tit. 8, sec. 32661]; Los Angeles Unified School District (1982) PERB Decision No. 218; Dry Creek Joint Elementary School District (1980) PERB Order No. Ad-81a.)

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 additional facts which would correct the deficiencies explained above, please amend the charge. 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

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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 **November 20, 1997**. I shall dismiss your charge. If you have any questions, please call me at (415) 439-6940.

Sincerely,

DONN GINOZA
Regional Attorney