

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



UNIVERSITY PROFESSIONAL AND
TECHNICAL EMPLOYEES, CWA LOCAL 9119,

Charging Party,

v.

REGENTS OF THE UNIVERSITY OF
CALIFORNIA, LOS ANGELES,

Respondent.

Case No. LA-CE-569-H

PERB Decision No. 1428-H

April 19, 2001

Appearances: Schwartz, Steinsapir, Dohrmann & Sommers by Michael R. Feinberg, Attorney, for University Professional and Technical Employees, CWA Local 9119; Leslie L. Van Houten, University Counsel, for Regents of the University of California, Los Angeles.

Before Amador, Baker and Whitehead, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (Board) on appeal by the University Professional and Technical Employees, CWA Local 9119 (UPTE) from the Board agent's dismissal (attached) of its unfair practice charge. In the charge, UPTE claimed that the University of California (UC), and specifically, the University of California, Los Angeles (UCLA) campus, breached the neutrality required by the Higher Education Employer-Employee Relations Act (HEERA) section 3583.5(b)¹ in the

¹HEERA is codified at Government Code section 3560 et seq. Section 3583.5(b) reads:

(b) The organizational security arrangement described in subdivision (a) shall remain in effect unless it is rescinded pursuant to subdivision (c). The higher education employer shall remain neutral, and shall not participate in any election conducted under this section unless required to do so by the board.

implementation of the "fair share" requirements of Senate Bill 645.² This breach of neutrality allegedly arose from UC's refusal to censure a webpage of the UCLA Bruin Online website created by NoFee4Me, a group of Staff Research Associates at UCLA who believe the fair share fee is unjust, and which UTPE claimed was a competing organization.

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

ORDER

The unfair practice charge in Case No. LA-CE-569-H is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Amador and Baker joined in this Decision.

²The original unfair practice charge additionally alleged that UC supported the anti-fair share movement at UC Irvine, UC Davis and UC San Diego, but failed to provide any specific facts as to those campuses. These allegations were therefore dismissed.

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8387
Fax: (916) 327-6377



July 11, 2000

Michael R. Feinberg, Attorney
Schwartz, Steinsapir, Dohrmann & Sommers
6300 Wilshire Blvd., Suite 2000
Los Angeles, CA 90048-5202

Re: University Professional And Technical Employees, CWA Local 9119 v. Regents of the University of California, Los Angeles
Unfair Practice Charge No. LA-CE-569-H
DISMISSAL LETTER

Dear Mr. Feinberg:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on February 18, 2000. Your charge asserts that the University of California (UC), specifically, the University of California, Los Angeles (UCLA) campus, has breached the neutrality required by the Higher Education Employer-Employee Relations Act (HEERA)¹ section 3583.5(b) in the implementation of the "fair share" requirements of Senate Bill 645 (SB 645).² The University's breach of neutrality has occurred by its refusal to censure a webpage of the UCLA Bruin Online website. You assert this webpage was created by a competing organization, NoFee4Me.

I indicated in my attached letter dated March 30, 2000, that the above-referenced charge did not state a prima facie case. UPTE was advised that, if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, it should amend the charge. UPTE was further advised that, unless it amended the charge to state a prima facie case or withdrew it prior to April 13, 2000 the charge would be dismissed.

Several extensions of time were granted and on May 4, 2000 an amended charge was filed. Following receipt of the amended charge, we had discussions regarding the theory of the charge as you saw it, in contrast to the analysis I had spelled out in my March 30 warning letter. I asked that you provide additional facts to support your new allegations that the University assisted the NoFee4Me group by permitting them to use the internal University

¹HEERA is codified at Government Code section 3560 et seq. The text of the HEERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

²You assert that UC has supported the anti-fair share movement at UC Irvine, UC Davis and UC San Diego, but failed to provide any specific facts as to those campuses. These allegations will therefore be dismissed.

courier system to circulate documents and petitions and that the University allowed numbers of e-mail messages to be sent regarding the rescission campaign and failed to monitor employees overuse of the email system during working hours. No additional facts were provided to overcome the shortcomings spelled out in my March 30 letter.. The additional material you did provide related to email usage by supporters of rescission at UCLA through some "intra-mail" system at the UCLA Hospital. You contend that the university has a business only approach to the use of "intra-mail", but provided no other information about the Employer's knowledge of the alleged abuse of the "intra-mail" policy by pro-rescission employees. No additional facts were provided to support the charge. .

As I advised in our phone conversation, the new allegations were not supported by facts to support your theory. HEERA section 3568 provides employee organizations "the right to use institutional bulletin boards, mailboxes and other means of communications " You have not asserted that the University failed to provide employees supporting UPTE with the same access that the NoFee4Me group is allegedly provided.

As discussed in my warning letter and your response, the Board's decision in Clovis Unified School District (1984) PERB Decision No. 389, requires strict neutrality by an employer in an election setting. In Clovis, supra, the Board reviewed allegations of disparate treatment towards one of the employee organizations by the employer. The unlawful activity in that case occurred immediately prior to a representation election when the employer provided stationery, release time, and typing and distribution of minutes of the in-house Faculty Senate without making similar assistance available to all employee organizations. The Board went on to state that the charging party/petitioner had no obligation to request similar assistance but rather that the employer had a duty to either provide the same assistance to all employee organizations or discontinue the practice it had established with the Faculty Senate.

The University has a policy that allows for interest groups to apply for webpage space. The University does not solicit interest groups to apply for space on the Bruin Online. It does not provide space to employee organizations representing University employees. The University also has an e-mail policy that provides at Section VI.A.8:

University electronic mail services may be used for incidental personal purposes provided that, in addition to the foregoing constraints and conditions, such does not: (i) directly or indirectly interfere with the University operation of computing facilities or electronic mail services; (ii) burden the University with noticeable incremental cost; or (iii) interfere with the email user's employment or other obligations to the University.

Your theory based on Clovis is that the Employer is required to advise UPTE and all other employee organizations that represent employees that access is being granted to webpage space prior to the access being granted. This goes well beyond the strict neutrality requirements of Clovis. It requires the University to treat each employee or student as a potential rival organization. This can not be viewed as the natural evolution of the Board's finding in Clovis.

First, this is not an election setting. Second, the NoFee4Me group is not alleged to be an employee organization, therefore, no additional assistance is being provided to a rival organization. Third, there is no allegation that the Employer has applied its granting of webpage space in a discriminatory fashion. The Employer is not alleged to have denied the use of webpage space to any UPTE supporter or advocate of agency fee.

Likewise, your assertion that the Employer by allowing employees to use the courier or email has supported the NoFee4Me group provides no facts to support the argument of favoritism or breaching a neutrality requirement. Therefore, I am dismissing the charge based on the facts and reasons contained in this letter and my March 30, 2000 letter.

Right to Appeal

Pursuant to PERB Regulations³, 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. (Regulation 32635(a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Regulations 32135(a) and 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Regulations 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

³ PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Copies of the Regulations may be purchased from PERB's Publications Coordinator, 1031 18th Street, Sacramento, CA 95814-4174, and the text is available at www.perb.ca.gov.

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. (Regulation 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 Regulation 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. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Regulation 32135(c).)

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. (Regulation 32132.)

Final Date

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

Sincerely,

ROBERT THOMPSON
Deputy General Counsel

By

Roger Smith
Labor Relations Specialist

Attachment

cc: Leslie Van Houten

RCS

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8387
Fax: (916) 327-6377



March 30, 2000

Cliff Fried, Executive V. P.
UPTE - CWA Local 9119
1015 Gayley Avenue, Suite 115
Los Angeles, California 90024

Re: University Professional And Technical Employees, CWA Local 9119 v. Regents of the University of California, Los Angeles
Unfair Practice Charge No. LA-CE-569-H
WARNING LETTER

Dear Mr. Fried:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on February 18, 2000. Your charge asserts that the University of California (UC), specifically, the University of California, Los Angeles (UCLA) campus, has breached the neutrality required by the Higher Education Employer-Employee Relations Act (HEERA)¹ section 3583.5(b) in the implementation of the "fair share" requirements of Senate Bill 645 (SB 645).² The University's breach of neutrality has occurred by its refusal to censure a webpage of the UCLA Bruin Online website. You assert this webpage was created by a competing organization, NoFee4Me.

HEERA section 3583.5(b) states:

(b) The organizational security arrangement described in subdivision (a) shall remain in effect unless it is rescinded pursuant to subdivision (c). The higher education employer shall remain neutral, and shall not participate in any election conducted under this section unless required to do so by the board.

The rules as set forth in the Bruin Online Acceptable Use Policy are:

Computers and networks can provide access to resources on and off campus, as well as the ability to communicate with other users

¹HEERA is codified at Government Code section 3560 et seq. The text of the HEERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

²You assert that UC has supported the anti-fair share movement at UC Irvine, UC Davis and UC San Diego, but failed to provide any specific facts as to those campuses. These allegations will therefore be dismissed.

worldwide. Such open access is a privilege, and requires that individuals act responsibly. Users must respect the rights of other users, respect the integrity of the systems and related physical resources, and observe all relevant laws, regulations, and contractual obligations.

The Bruin Online is available for use by faculty, staff and students. The NoFee4Me group consists of webpage account holder Toshka Abrams. Ms. Abrams is a Staff Research Associate (SRA) for UCLA. She and seventeen other SRAs are listed as a group of employees who believe the fair share fee is unjust.

You allege that UCLA has violated its own internet policy in order to support the NoFee4 Me group and that this is a violation of HEERA section 3583.5(b). This case is analyzed as an interference charge in that you allege that UCLA has interfered with University Professional and Technical Employees, (UPTE) CWA Local 9119's rights along with those of its members, to have UCLA remain neutral regarding agency fee matters.

PERB has held that to demonstrate a prima facie case of interference, the charging party must show that the respondent's conduct tends to or does result in some harm to employee rights guaranteed by the HEERA. (Carlsbad Unified School District (1979) PERB Decision No. 89 at p. 10.; California State University (Sacramento) (1982) PERB Decision No. 211.)

Interference in this case would mean charging party demonstrating that the employer has breached the neutrality requirement by providing assistance to one group of employees over another. PERB has defined neutrality in a series of cases which hold that an employer may not bestow benefits on one organization and not another. (See Clovis Unified School District (1984) PERB Decision No. 389 (Clovis) ; State of California (1982) PERB Decision No. 198; and Santa Monica Community College District (1979) PERB Decision No. 103.) In these cases, the Board analyzed allegations of favoritism towards one employee organization over another. In Clovis, the Board found that the employer's financial assistance to one organization and expressed support towards the favored group was unlawful in the context of an election setting. However, it is not unlawful to provide support so long as it is available to all groups. See Clovis.

In this case, you have asserted that UCLA has provided employees with access to the Bruin Online website. You do not contend that the employer has denied equal access to employees who support fair share. You have not provided any information demonstrating that UCLA breached its required neutrality. The assertion that UC violated its own internet/e-mail policies without more specificity does not demonstrate that UC has violated the required neutrality of HEERA section 3583.5(b). A charging party should allege the "who, what, when, where, and how" of an unfair practice. (United Teachers-Los Angeles (Ragsdale) (1992) PERB Decision No. 944.)

Through this charge you also assert that UCLA is supporting a rival employee organization. To state a prima facie violation of HEERA section 3571(d), the charging party must allege facts which demonstrate that the employer's conduct tends to interfere with the internal

activities of an employee organization or tends to influence the choice between employee organizations. (Santa Monica Community College District (1979) PERB Decision No. 103, (Santa Monica CCD); Redwoods Community College District (1987) PERB Decision No. 650, (Redwoods CCD); State of California (Corrections) (1993) PERB Decision No. 972-S.) Proof that an employer intended to unlawfully dominate, assist or influence employees' free choice is not required. Nor is it necessary to prove that employees actually changed membership as a result of the employer's act. (Santa Monica CCD; Redwoods CCD.) The threshold test is "whether the employer's conduct tends to influence [free] choice or provide stimulus in one direction or the other." (Santa Monica CCD, p. 22.)

In Sierra Sands Unified School District (1993) PERB Decision No. 977, PERB held that a group of employees contesting an agency fee provision in its contract was not an employee organization for purposes of the Educational Employment Relations Act. In that case, PERB found that the employer's denial of the use of teacher mailboxes to a group opposed to agency fee did not violate EERA section 3543.5(b). You have provided no facts to support your contention that NoFee4Me is a competing employee organization within the definition of employee organization found at HEERA section 3562 (f)(1) nor that the employer is treating them with any preference. Therefore, you have also failed to demonstrate that UCLA interfered with the internal activities of UPTE in violation of 3571(d)..

Finally, the charge requests a remedy that UC provide UPTE "with copies of all information, data or materials it has given to the anti fair share group i.e. mailing lists, labels, discs, and so forth (including, for example, employee home ore-mail address lists." The charge as presently stated does not provide any information as to what violation of HEERA occurred or what the theory of this requested remedy might be associated with. For this reason, lack of specificity, this allegation must also be dismissed.

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 be signed under penalty of perjury by the charging party. The amended charge must have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before April 13, 2000, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

^u
Roger Smith
Labor Relations Specialist

RCS:cke