STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

UNITED ADMINISTRATORS OF OAKLAND SCHOOLS,	
Charging Party,	Case No. SF-CE-2243-E
v.	PERB Decision No. 1544
OAKLAND UNIFIED SCHOOL DISTRICT,	July 23, 2003
Respondent.	

Appearance: Berger, Nadel & Vannelli by Robert D. Links, Attorney, for United Administrators of Oakland Schools.

Before Baker, Whitehead and Neima, Members.

DECISION

NEIMA, Member: This case is before the Public Employment Relations (PERB or Board) on appeal by the United Administrators of Oakland Schools (UAOS) of a Board agent's dismissal (attached) of its unfair practice charge. The charge alleged that the Oakland Unified School District (District) violated the Educational Employment Relations Act (EERA)[1] by negotiating a collective bargaining agreement (CBA) with the Oakland Education Association (OEA) that included procedural language regarding "Faculty Councils" in a manner that affected the working conditions of UAOS members without affording UAOS prior notice or an opportunity to bargain. While Faculty Councils have existed for some time, UAOS alleged

[1] EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

that this conduct constituted a failure to bargain in good faith and denied UAOS its rights under EERA, in violation of EERA section 3543.5(b) and (c).[2]

UAOS represented a bargaining unit of certificated and classified school site administrators. The Faculty Councils were advisory bodies authorized to make suggestions and recommendations to school site administrators represented by UAOS.

The charge alleged that "within the past six months, UAOS and its members have been approached and asked to participate in various procedures regarding 'Faculty Councils' established pursuant to the agreement between" the District and OEA (District/OEA CBA). Without specifying when, UAOS stated that the District "bargained with OEA for the inclusion of the Faculty Council" in its agreement with the District, but UAOS was not involved and there is no provision in the CBA between the District and UAOS (District/UAOS CBA) requiring UAOS members to participate in the Faculty Councils. UAOS asserted that "the Faculty Council Procedure and the substance of the work, [have] a distinct and direct impact on the working conditions of the UAOS certificated bargaining unit." UAOS contended that it had requested to bargain "over this issue" but that its requests were ignored.

UAOS attached to its charge a document (handout) entitled "Outline and Selected Excerpts...", later identified by the District as a training handout reflecting a tentative

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[2] EERA section 3543.5 provides, in relevant 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.
>
> (c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

agreement between the District and OEA to article 7, section 6 of their 1999-2002 CBA. UAOS averred that "changes" were highlighted by underscoring in the hand-out. Provisions with underscored language covered multiple subjects. Of central importance to this case, UAOS cited text in the handout regarding frequency of the faculty council meetings. The underscored words "at least"[3] were included in that text, so that it read as follows:

> It shall be the function of the FC [Faculty Council] to meet at least monthly in order to identify and discuss any and all problems and issues of common concern related to the program at the school.

Also attached to the charge was a copy of a letter from UAOS to the District's director of labor relations, appearing to reply to a request by the District that the UAOS participate in training sessions regarding the Faculty Councils. UAOS asserted in the letter that, since there was no mention of the Faculty Councils in the District/UAOS CBA, the District should suspend relevant provisions of the District/OEA CBA until the District negotiated Faculty Council procedures with UAOS. UAOS contended that, since the alleged changes were made without affording UAOS prior notice or an opportunity to bargain, they constituted a failure to bargain and deprived UAOS of its rights under EERA.

The District responded to the charge, asserting that the Faculty Councils had been existence for many years. Rather than being a result of bargaining with the OEA, Faculty Council procedures were established by the District in 1978 through an administrative bulletin. According to the District, Faculty Councils have been a regular and longstanding activity that is considered "a necessary part of a principal's duties" for many years. The District stated that OEA and the District agreed to move all provisions related to Faculty Councils to a single section of their labor agreement (article 7, section 6). The District argues that the language

[3] The parties do not dispute that these words are new.

does not represent a significant change in the nature or role of Faculty Councils. As a result, argued the District, "neither reformatting sections of the OEA labor agreement nor agreeing to engage in joint training with the OEA triggers an obligation to negotiate with UAOS." The District served its response on UAOS.

UAOS did not allege facts in conflict with the District's assertion that during negotiations over the District/OEA CBA, the parties agreed to move all contract provisions regarding Faculty Councils into a single article in the agreement. Many of the consolidated provisions in the handout note a reference to their previous locations in the District/OEA CBA.

UAOS' reply to the District stated that:

> . . . while there have been Faculty Councils, there has never been a clause in <u>any</u> collective bargaining contract that dictates how often they shall meet. [Emphasis in original.] The new language (the change is highlighted by underscoring in the attachment to the charge itself), states that: 'It shall be the function of the FC [Faculty Council] to meet <u>at least</u> monthly.' [Underscoring in original.]

UAOS then added "Prior to the insertion of this new language, there was no specific requirement as to when a Faculty Council was required to meet." UAOS did not assert, however, that the monthly meeting requirement, absent the words "at least," constituted new policy. Nor did UAOS explain how the alleged change had an impact on UAOS members' conditions of employment.

UAOS stated generally that there were "additional terms" newly added to the 1999-2002 District/OEA CBA and referred to the attachment to its charge, discussed above. However, UAOS did not specifically identify which terms were new or explain how they had an impact on the working conditions of UAOS members.

The Board agent found that any differences in the job duties of UAOS members resulting from modifications to the District/OEA CBA were reasonably comprehended within job duties that existed prior to the contractual modifications, so they did not constitute unilateral changes in a matter within the scope of representation. (Citing Davis Joint Unified School District (1984) PERB Decision No. 393; Rio Hondo Community College District (1982) PERB Decision No. 279.) Specifically, the Board agent said:

> From your charge, it appears that the bargaining unit members represented by UAOS have participated in faculty councils in the past and that such participation is 'reasonably comprehended within their existing job duties.' That the councils may now meet more frequently or that they include training does not represent a unilateral change on a matter within the scope of bargaining. (Warning Letter, p. 2.)

Based on that finding, the Board agent dismissed the charge for failure to state a prima facie case.

DISCUSSION

PERB Regulation 32615(c)[4] provides that a charge shall state "A clear and concise statement of the facts and conduct alleged to constitute an unfair practice." The Board finds that UAOS' charge has failed to satisfy that requirement and that UAOS failed to allege sufficient facts before the Board agent to support the charge. Accordingly, the Board holds that the Board agent properly dismissed the charge for failure to state a prima facie case, for the following reasons.

First, UAOS does not specify when the alleged unfair practice occurred. The charge states generally that "within the past six months" the District asked UAOS members "to

[4] PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

participate in various procedures regarding 'Faculty Councils'…." UAOS does not specify when those procedures were adopted or if they preexisted the negotiations between the District and OEA. Under EERA, a party must file a charge within six months of the date he or she knew or should have known of the alleged unlawful conduct. (See Gavilan Joint Community College District (1996) PERB Decision No. 1177.) From UAOS' allegations, it is impossible to discern whether the charge is timely.

Second, UAOS' submissions create and fail to resolve an ambiguity regarding which specific language was added to the District/OEA CBA, when it was added, how it was added, and whether it was previously codified elsewhere. Taken literally, UAOS' arguments appear to state that the underscored words "at least" represent a change in an existing policy regarding monthly Faculty Council meetings currently included within language codified in article 7 of the District/OEA CBA. This "change" as presented by UAOS does not appear, on its face, to mandate a greater frequency of the meetings than under existing policy. While it can be read to reinforce the literal meaning of the previous policy regarding Faculty Councils, at most, the "change" implies that more frequent meetings are permissible.

On appeal, UAOS does not address this inadequacy in the facts and argument it presented to the Board agent or reconcile them with the literal text it presents for review. Instead, UAOS shifts away from reliance on "changes" to the contract language to a new unilateral change theory, arguing that the District has departed from past practice. (See Rio Hondo Community College District (1982) PERB Decision No. 279, and citations therein: unilateral change charge must prove employer altered established policy; nature of existing policy discerned from record as a whole; may be embodied in terms of agreement; in absence of contractual term, may be ascertained by examining past practice.)

Specifically, UAOS asserts on appeal:

> The gist of the charge is that the District violated Section 3543.5(b) and (c) of the Government Code when it unilaterally changed the existing procedure for Faculty Council meetings by agreeing as part of another unit's contract that UAOS members would have to conduct such meetings on a monthly basis, whereas hereto fore [sic] the meetings were conducted sporadically and on an ad hoc basis.

However, fatal to UAOS' new approach is the fact that UAOS failed to produce factual allegations before the Board agent to establish any practice, past or present, which could support a claim of unilateral change. Thus, there is no support for UAOS' assertion on appeal that "hereto fore [sic] the meetings were conducted sporadically and on an ad hoc basis." New factual allegations are not permitted on appeal, absent a showing of good cause, which was not attempted here. (PERB Reg. 32635(b).)

UAOS also states on appeal that the amendments to the provision regarding frequency of meetings "means at least 9 meetings a year when previously, half that many may have been scheduled." As discussed above, however, there does not appear to be a textual change that would cause the increase claimed on appeal by UAOS. Moreover, UAOS' statement asserts facts not alleged in the charge. Such new factual suggestions are not permitted.

The Board notes that the attachment to UAOS' charge contains underscored language from the District/OEA CBA on several subjects in addition to scheduling of faculty council meetings. UAOS submitted conclusory assertions in correspondence to the Board agent that there were "additional procedures" reflected in the handout and that UAOS should have had an opportunity to bargain over them. However, UAOS did not specify which language was new or material. Nor did it submit factual allegations regarding whether or to what

extent language in the handout reflected substantive changes with an impact on the working conditions of UAOS members.

In addition, as noted above, UAOS never alleged facts in conflict with the District's assertions in its letter to the Board agent that "the District and OEA...agreed to move all contract provisions related to Faculty Councils to a single section of the labor agreement for ease of reference" and that the language did not constitute new policy. Thus, UAOS also has failed to establish a prima facie case of unilateral change or violation of rights based on any other provision or change in procedure.

UAOS' remaining arguments do not address its failure to allege a factual basis for a charge of unilateral change or violation of UAOS' rights. Accordingly, those will not be addressed.

UAOS is then left with the (underscored) textual "change" on which it based its arguments to the Board agent. As discussed above, absent further information in the charge or submissions to the Board agent, the inclusion of the words "at least" does not appear to have mandated a change from previously existing policy regarding the frequency of meetings.

Having failed to allege with specificity whether any other new language was at issue and having failed to allege facts showing that the language in the District/OEA CBA changed the existing actual practice, UAOS has failed to state a prima facie case and the dismissal must be affirmed.

Therefore, after reviewing the charge, the District's response, UAOS' reply, the warning and dismissal letters, and UAOS' appeal, the Board affirms the dismissal of UAOS' charge consistent with the foregoing discussion.

<ins>ORDER</ins>

The unfair practice charge filed by United Administrators of Oakland Schools in Case No. SF-CE-2243-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Baker and Whitehead joined this Decision.

STATE OF CALIFORNIA GRAY DAVIS, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8386
Fax: (916) 327-6377

June 27, 2002

Robert D. Links, Attorney
Berger, Nadel & Vannelli
650 California Street, 25th Floor
San Francisco, CA 94108-2702

Re: United Administrators of Oakland Schools v. Oakland Unified School District
Unfair Practice Charge No. SF-CE-2243-E
DISMISSAL LETTER

Dear Mr. Links:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 27, 2001. The United Administrators of Oakland Schools (UAOS) alleges that the Oakland Unified School District violated the Educational Employment Relations Act (EERA)[1] by making a unilateral change in working conditions.

I indicated to you in my attached letter dated June 20, 2002, 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 26, 2002, 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 20 letter.

Right to Appeal

Pursuant to PERB Regulations,[2] 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

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[1] EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

[2] PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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

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
General Counsel

By ____________________
Bernard McMonigle
Regional Attorney

Attachment

cc: Rumi Ueno

STATE OF CALIFORNIA GRAY DAVIS, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8386
Fax: (916) 327-6377

June 20, 2002

Robert D. Links, Attorney
Berger, Nadel & Vannelli
650 California Street, 25th Floor
San Francisco, CA 94108-2702

Re: United Administrators of Oakland Schools v. Oakland Unified School District
Unfair Practice Charge No. SF-CE-2243-E
WARNING LETTER

Dear Mr. Links:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 27, 2001. The United Administrators of Oakland Schools (UAOS) alleges that the Oakland Unified School District violated the Educational Employment Relations Act (EERA)[1] by making a unilateral change in working conditions. We discussed this charge in April and again on June 14, 2002. I returned the call of Julian Cane, Executive Director of UAOS, on June 18, he was not in and I left a message.

Your charge states that the certificated portion of UAOS represents site administrators including school principals and assistant principals. There is currently a collective bargaining agreement between the parties which expires on June 30, 2002.

Without providing dates, you state that "within the last six months" the members of the UAOS bargaining unit have been approached by the employer and asked to participate in "Faculty Councils". The councils meet to discuss problems and issues of common concern of employees at a school site. According to your letter of April 26, such councils have existed "for some time" and UAOS bargaining unit members have participated in past meetings.

Your charge states that the District negotiated contract language with the Oakland Education Association the states that the Faculty Councils will meet monthly. You have not supplied a date for these negotiations; however, the contract dates appear to be July 1, 1999 to June 30, 2002.

On November 20, 2001, Julian Cane wrote a letter to the District which stated that bargaining unit members had been approached about joint training at various schools with the Oakland Education Association on the topic of Faculty Councils. He requested that the District suspend

[1] EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

the councils and bargain with UAOS over Faculty Council procedure. The District has denied the request.

In determining whether a party has violated EERA section 3543.5(c), PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. (Stockton Unified School District (1980) PERB Decision No. 143.) Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented before the employer notified the exclusive representative and gave it an opportunity to request negotiations. (Walnut Valley Unified School District (1981) PERB Decision No. 160; Grant Joint Unified High School District (1982) PERB Decision No. 196.)

The Board has determined that the determination of what duties are to be performed by employees is a managerial prerogative. (Davis Joint Unified School District) (1984) PERB Decision No. 393. In order to prevail on a theory of a unilateral change in job responsibilities, the charging party must demonstrate actual changes in the employee's job duties. If the changes are reasonably comprehended within the existing job duties, an assignment of such duties, even if never performed before, is not a violation. (Rio Honda Community College District (1982) PERB Decision No. 279.)

From your charge, it appears that the bargaining unit members represented by UAOS have participated in faculty councils in the past and that such participation is "reasonably comprehended within their existing job duties." That the councils may now meet more frequently or that they include training does not represent a unilateral change on a matter within the scope of bargaining.

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 that 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 June 26, 2002, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Bernard McMonigle
Regional Attorney