

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SAN LEANDRO TEACHERS ASSOCIATION,

Charging Party,

v.

SAN LEANDRO UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. SF-CE-2447-E

PERB Decision No. 1772

June 28, 2005

Appearances: California Teachers Association by Priscilla S. Winslow, Attorney, for San Leandro Teachers Association; Ruiz & Sperow by Alison C. Neufeld, Attorney, for San Leandro Unified School District.

Before Duncan, Chairman; Whitehead and McKeag, Members.

DECISION

MCKEAG, Member: This case is before the Public Employment Relations Board (Board) on appeal by the San Leandro Teachers Association (Association) of a Board agent's dismissal (attached). The unfair practice charge alleges that the San Leandro Unified School District (District) violated the Educational Employment Relations Act (EERA)¹ by prohibiting the distribution of union newsletters containing information on the union's political endorsements in District mailboxes.

The Board has reviewed the entire record, including the unfair practice charge, the warning and dismissal letters, the Association's appeal and the District's response. The Board finds the Board agent's dismissal to be free of prejudicial error and adopts it as a decision of the Board itself.

¹EERA is codified at Government Code section 3540, et seq.

ORDER

The unfair practice charge in Case No. SF-CE-2447-E is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member Whitehead joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1021
Fax: (510) 622-1027



March 17, 2005

Priscilla Winslow, Assistant Chief Counsel
California Teachers Association
P.O. Box 921
Burlingame, CA 94011-0921

Re: San Leandro Teachers Association v. San Leandro Unified School District
Unfair Practice Charge No. SF-CE-2447-E
DISMISSAL LETTER

Dear Ms. Winslow:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on November 16, 2004. The San Leandro Teachers Association alleges that the San Leandro Unified School District violated the Educational Employment Relations Act (EERA)¹ by prohibiting the Association from distributing its newsletters in teachers' mailboxes when the newsletters contain information about the union's political endorsements.

I indicated to you in my attached letter dated February 17, 2005, 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 filed an amended charge with this office on February 28, 2005.

In the amended charge, you assert that the facts in this case can be distinguished from those in San Diego Community College District (2001) PERB Decision No. 1467, because mailboxes are not District equipment since they are permanently attached to the wall and require no maintenance or service by specialized technicians. However, in San Diego, the Board found that the plain meaning of Education Code §7054² prohibited the use of mailboxes as a means of distributing political information.

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 California Education Code §7054 provides:

[n]o school district or community college district funds, services supplies, or equipment shall be used for the purpose of urging the support or defeat of any ballot measure or candidate, including, but not limited to, any candidate for election to the governing board of the district.

You also assert that the purpose of the two flyers in question, in addition to updating the members regarding negotiations, was to encourage them to participate in union activities. There can be no dispute, however, that those activities, i.e., campaigning for school board candidates, were political.

Finally, you also allege that copies of the local newspaper containing articles endorsing individuals for school board are routinely distributed in teachers' mailboxes, as are advertisements from insurance companies and local businesses and information from the PTA and other organizations. While this may be true, it does not diminish the Education Code prohibition as it pertains to the union.

Therefore, I am dismissing the charge based on the facts and reasons stated above and contained in my February 17, 2005, letter.

Right to Appeal

Pursuant to PERB Regulations,³ 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. (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.

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
Jerilyn Gelt
Labor Relations Specialist

Attachment

cc: Martin S. Kresse

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
1330 Broadway, Suite 1532
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February 17, 2005

Priscilla Winslow, Assistant Chief Counsel
California Teachers Association
P.O. Box 921
Burlingame, CA 94011-0921

Re: San Leandro Teachers Association v. San Leandro Unified School District
Unfair Practice Charge No. SF-CE-2447-E
WARNING LETTER

Dear Ms. Winslow:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on November 16, 2004. The San Leandro Teachers Association alleges that the San Leandro Unified School District violated the Educational Employment Relations Act (EERA)¹ by prohibiting the Association from distributing its newsletters in teachers' mailboxes when the newsletters contain information about the union's political endorsements.

The Association distributed a newsletter to teachers' mailboxes on or about October 11, 2004. Among other items, the newsletter contained an item entitled "School Board Election." The item urged teachers to volunteer in support of two named individuals whom the Association supported for election to the school board.

On or about October 12, 2004, the Association distributed an negotiations update to teachers' mailboxes. A paragraph at the bottom of the letter urged teachers to volunteer in support of "our School Board Candidates." Both newsletters were prepared at Association expense and distributed on non-work time.

On October 15, 2004, Assistant Superintendent of Human Resources Mike Martinez sent a letter to Association President John Sherr. The letter indicated that the District believed these letters to be impermissible under Education Code §7054. Although the District became aware of the letters too late to remove them, Mr. Martinez stated that his letter placed the Association on notice that "we will not allow the SLTA access to faculty mailboxes if any future distributions contain impermissible political endorsements."

California Education Code §7054 provides:

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.

[n]o school district or community college district funds, services, supplies, or equipment shall be used for the purpose of urging the support or defeat of any ballot measure or candidate, including, but not limited to, any candidate for election to the governing board of the district.

In San Diego Community College District (2001) PERB Decision No. 1467, PERB held that Education Code §7054 supersedes access rights under EERA and, therefore, a union may not use school district mail facilities to distribute political material, regardless of who pays for the material or when it is distributed. While the political items in the October 11 and 12 flyers were not the only issues addressed therein, their inclusion in the flyers made it unlawful to distribute them in the teachers' mailboxes.

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 February 28, 2005, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Jerilyn Gelt
Labor Relations Specialist

JAG