

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



KATHY R. BAILEY,  
Charging Party,

v.

UPTE, CWA LOCAL 9119,

Respondent.

Case No. SF-CO-84-H

PERB Decision No. 1812 - H

January 18, 2006

Appearances: Werner Witke, Representative, for Kathy R. Bailey; Leonard Carder by Margot Rosenberg, Attorney, for UPTE, CWA Local 9119.

Before Duncan, Chairman; Shek and McKeag, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Kathy R. Bailey (Bailey) of a Board agent's dismissal of her unfair practice charge. The charges are the same in a number of cases filed by Werner Witke (Witke) on behalf of numerous individuals (Charging Parties). The charges allege that UPTE, CWA Local 9119 (UPTE) violated the Higher Education Employer-Employee Relations Act (HEERA).<sup>1</sup>

Bailey alleges that UPTE has violated HEERA by collecting agency fees prior to providing Hudson<sup>2</sup> notices to nonmembers and benefiting from an interest free loan at her expense for the period between collection and refund of the challenged agency fees. Just as in

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<sup>1</sup>HEERA is codified at Government Code section 3560, et seq.

<sup>2</sup>Chicago Teachers Union. Local No. 1 v. Hudson (1986) 475 U.S. 292 [121 LRRM 2793] (Hudson).

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Bailey alleges that this is a violation of PERB Regulation 32992<sup>3</sup> which requires that written notice be sent/distributed to nonmembers at least 30 days prior to collection of agency fees and that fees subject to objection shall be placed in an escrow account as set forth in PERB Regulation 32995.

The Board agent dismissed Bailey's unfair practice charge for lack of standing based on the Board's decision in California Nurses Association (O'Malley) (2004) PERB Decision No. 1673-H (CNA (O'Malley)).

We have reviewed the complete record in this case, including, but not limited to, the initial unfair practice charge, the warning and dismissal letters, Bailey's appeal and UPTE's response to the appeal. We find that CNA (O'Malley) is not applicable here as the charging party in that case is not an agency fee payer. Bailey, and the Charging Parties listed below, are agency fee payers and as such have standing. The essential facts alleged must be taken as true.<sup>4</sup>

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Following the reasons set forth in UPTE (Abernathy), this case is referred to the Office of the General Counsel for a complaint to issue. The charges filed by Witke on behalf of the Charging Parties have the same facts and they shall be consolidated by the Office of the General Counsel. The Charging Parties in these cases as currently captioned are:

Kathy Aldern (Case No. LA-CO-104-H), Jo Ann Christina (Case No. LA-CO-105-H), Dale R. Disharoon (Case No. LA-CO-106-H), Gary Steven Ditta (Case No. LA-CO-107-H), Gary Newell Foreman (Case No. LA-CO-108-H), Siv Garrod (Case No. LA-CO-109-H), Ruby Lam (Case No. LA-CO-110-H), Xioaqing Li (Case No. LA-CO-112-H), Stephanie Lynn Mount (Case No. LA-CO-113-H), Heather Meri Oakley (Case No. LA-CO-114-H), Robert Ellis Parks (Case No. LA-CO-115-H), Sharon Walker Stanfield (Case No. LA-CO-116-H), Joseph B. Stagg (Case No. LA-CO-117-H),

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<sup>3</sup>PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

<sup>4</sup>Golden Plains Unified School District (2002) PERB Decision No. 1489.

Rodney N. Trout (Case No. LA-CO-118-H), Jun Zhao (Case No. LA-CO-119-H), Leonides B. Sayson (Case No. LA-CO-120-H), Anne Basile Nieves (Case No. LA-CO-122-H), Ottillia J. Bier (Case No. LA-CO-124-H), Peter Baird Billings (Case No. LA-CO-125-H), Sandra Doris Braun (Case No. LA-CO-126-H), Kathleen Donnelly (Case No. LA-CO-130-H), Michael L. Fox (Case No. LA-CO-132-H), Patricia Fay Hasegawa (Case No. LA-CO-133-H), Hammon Dale Humphries (Case No. LA-CO-135-H), Nonna Kondratenko (Case No. LA-CO-138-H), Elizabeth Rose Miller (Case No. LA-CO-140-H), Nghia Nguyen (Case No. LA-CO-141-H), Andrea Kalkhof-Thor (Case No. LA-CO-142-H), Deborah Lou Zmarzly (Case No. LA-CO-143-H), Zhen Ye (Case No. LA-CO-144-H), Steven J. Weaver (Case No. LA-CO-146-H), Hao Trinh (Case No. LA-CO-147-H), Kaizhi Guo Sharman (Case No. LA-CO-150-H), Catherine Ann O'Harra (Case No. LA-CO-153-H), Yukiko Aochi (Case No. LA-CO-154-H), Katherina L. Carter (Case No. LA-CO-157-H), Ruisheng Chang (Case No. LA-CO-158-H), Adam Corey Cox (Case No. LA-CO-160-H), John R. Darsow (Case No. LA-CO-161-H), Laurel A. Davis (Case No. LA-CO-162-H), Carol Asimow Gray (Case No. LA-CO-163-H), Todd Allen Herman (Case No. LA-CO-164-H), Jane Carol Hines (Case No. LA-CO-165-H), Nina Humphries (Case No. LA-CO-166-H), Chi Sung Kim (Case No. LA-CO-167-H), Sherry L. McCann (Case No. LA-CO-170-H), Mihaela E. Nistor (Case No. LA-CO-172-H), Fred Arroyo Oseguera (Case No. LA-CO-173-H), Mabel Pang (Case No. LA-CO-174-H), Jody Michelle Roberts (Case No. LA-CO-176-H), Thomas F. Shea (Case No. LA-CO-178-H), Vandana Singh (Case No. LA-CO-180-H), Andrew Szajczyk (Case No. LA-CO-181-H), Dennis Ta (Case No. LA-CO-182-H), Ian Charles Topham (Case No. LA-CO-183-H), Randal Gerard Unwin (Case No. LA-CO-184-H), Ratko Dragomir Vasic (Case No. LA-CO-185-H), Miguel Vilchez (Case No. LA-CO-186-H), Jennifer M. Wang (Case No. LA-CO-187-H)

Leslie Diane Abrams Carter (Case No. LA-CO-189-H), Jennifer Marie Novak (Case No. LA-CO-192-H), Joseph P. Sanding (Case No. LA-CO-193-H), David Fredrick Weiner (Case No. LA-CO-194-H), Chalermchai Chaloyphian (Case No. LA-CO-196-H), Barbara Jane Dillon (Case No. LA-CO-197-H), Sasa Maslesa Galic (Case No. LA-CO-198-H), Suzanne M. Vega (Case No. LA-CO-199-H), John Malvin Neil (Case No. LA-CO-200-H), Pascal Oevering (Case No. LA-CO-201-H), Michi Yamamoto (Case No. LA-CO-202-H), Judith Bereczky (Case No. SA-CO-25-H), Jean Shepard (Case No. SA-CO-26-H), Mahvash Sigaroudinia (Case No. SF-CO-85-H), Christina Petersen Ahn (Case No. SF-CO-86-H), Nikita Yakubovich (Case No. SF-CO-87-H), Mara Crovello (Case No. SF-CO-88-H), Samantha Zhu (Case No. SF-CO-89-H), King Chiu (Case No. SF-CO-90-H), Hamid Nor (Case No. SF-CO-91-H), Martha Costas-Lippmann (Case No. SF-CO-92-H), Vernita Ares (Case No. SF-CO-93-H)

Ivan B. Lee (Case No. LA-CO-191-H)

Francisco Chanes (Case No. LA-CO-204-H), Fanor Bohorquez (Case No. LA-CO-208-H), Gregory Montez (Case No. LA-CO-218-H), Rebecca K. Harper (Case No. LA-CO-220-H), Charles Roger Stearns (Case No. LA-CO-221-H), Jay Scott Murphy (Case No. LA-CO-224-H), Linda V. Hall (Case No. LA-CO-233-H)

Nicolette Van Sluis (Case No. LA-CO-213-H)

Gregory F. Welch (Case No. LA-CO-226-H), Julie B. Blix (Case No. LA-CO-230-H)

Felicita E. Bailey (Case No. LA-CO-232-H)

Leanne Gill (Case No. SA-CO-27-H), Betty Diane Richter (Case No. SA-CO-28-H), Peggy Bledsoe (Case No. SA-CO-29-H), Mika P. Tolson (Case No. SA-CO-30-H), Sharon Oltjen (Case No. SA-CO-31-H), Theresa M. Harrington (Case No. SA-CO-32-H), Melvin T. Imai (Case No. SA-CO-33-H), Debra V. Aldridge (Case No. SA-CO-36-H), Vera I. Perez (Case No. SA-CO-38-H), Mary J. Williams (Case No. SA-CO-39-H), Andrea Elizabeth Packham (Case No. SA-CO-41-H), Shizuo George Kamita (Case No. SA-CO-42-H), Brenda B. Cameron (Case No. SA-CO-43-H)

Robert Leslie Brooks (Case No. SA-CO-34-H)

Sharon Boylan (Case No. SA-CO-35-H)

Christine E. Joshel (Case No. SA-CO-37-H)

Gayle Marie Crisosto (Case No. SA-CO-40-H)

Janice Hatchell Cooper (Case No. SA-CO-45-H)

Lana Widman (Case No. SA-CO-46-H)

Stephanie Abernathy (Case No. LA-CO-123-H), Carolyn G. Lem (Case No. LA-CO-152-H), Xiaoqing Qu (Case No. LA-CO-168-H)

### ORDER

The Public Employment Relations Board REMANDS the unfair practice charge in Case No. SF-CO-84-H to the Office of the General Counsel for a complaint to issue and for consolidation with Case Nos. LA-CO-104-H, LA-CO-105-H, LA-CO-106-H, LA-CO-107-H, LA-CO-108-H, LA-CO-109-H, LA-CO-110-H, LA-CO-112-H, LA-CO-113-H, LA-CO-114-H, LA-CO-115-H, LA-CO-116-H, LA-CO-117-H, LA-CO-118-H, LA-CO-119-H, LA-CO-120-H, LA-CO-122-H, LA-CO-123-H, LA-CO-124-H, LA-CO-125-H, LA-CO-126-H, LA-CO-130-H, LA-CO-132-H, LA-CO-133-H, LA-CO-135-H, LA-CO-138-H, LA-CO-140-H, LA-CO-141-H, LA-CO-142-H, LA-CO-143-H, LA-CO-144-H, LA-CO-146-H, LA-CO-147-H, LA-CO-150-H, LA-CO-152-H, LA-CO-153-H, LA-CO-154-H, LA-CO-157-H, LA-CO-158-H, LA-CO-160-H,

LA-CO-161-H, LA-CO-162-H, LA-CO-163-H, LA-CO-164-H, LA-CO- 165-H, LA-CO-166-H,  
LA-CO-167-H, LA-CO-168-H, LA-CO- 170-H, LA-CO-172-H, LA-CO- 173-H, LA-CO- 174-H,  
LA-CO-176-H, LA-CO-178-H, LA-CO-180-H, LA-CO-181-H, LA-CO-182-H, LA-CO-183-H,  
LA-CO-184-H, LA-CO-185-H, LA-CO-186-H, LA-CO- 187-H, LA-CO- 189-H, LA-CO-191-H,  
LA-CO-192-H, LA-CO-193-H, LA-CO-194-H, LA-CO-196-H, LA-CO-197-H, LA-CO-198-H,  
LA-CO-199-H, LA-CO-200-H, LA-CO-201-H, LA-CO-202-H, LA-CO-204-H, LA-CO-208-H,  
LA-CO-213-H, LA-CO-218-H, LA-CO-220-H, LA-CO-221-H, LA-CO-224-H, LA-CO-226-H,  
LA-CO-230-H, LA-CO-232-H, LA-CO-233-H, SA-CO-25-H, SA-CO-26-H, SA-CO-27-H,  
SA-CO-28-H, SA-CO-29-H, SA-CO-30-H, SA-CO-31-H, SA-CO-32-H, SA-CO-33-H,  
SA-CO-34-H, SA-CO-35-H, SA-CO-36-H, SA-CO-37-H, SA-CO-38-H, SA-CO-39-H,  
SA-CO-40-H, SA-CO-41-H, SA-CO-42-H, SA-CO-43-H, SA-CO-45-H, SA-CO-46-H,  
SF-CO-85-H, SF-CO-86-H, SF-CO-87-H, SF-CO-88-H, SF-CO-89-H, SF-CO-90-H,  
SF-CO-91-H, SF-CO-92-H and SF-CO-93-H.

Members Shek and McKeag joined in this Decision.