STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

LOS ANGELES SCHOOL POLICE ASSOCIATION, Charging Party, v. LOS ANGELES UNIFIED SCHOOL DISTRICT, Respondent.	Case No. LA-CE-4809-E PERB Decision No. 1827 March 8, 2006

Appearances: Lackie & Dammeier by Michael A. Morguess, Attorney, for Los Angeles School Police Association; Paul, Hastings, Janofsky & Walker by Holly R. Lake, Attorney, for Los Angeles Unified School District.

Before Duncan, Chairman, McKeag and Neuwald, Members.

DECISION

McKEAG, Member: This case is before the Public Employment Relations Board (Board) on appeal by the Los Angeles School Police Association (Association) of a Board agent's dismissal (attached) of its unfair practice charge. The charge alleges that the Los Angeles Unified School District (District) violated the Educational Employment Relations Act (EERA)[1] by transferring bargaining unit work out of the unit.

The Board has reviewed the unfair practice charge, the first and second amended unfair practice charge and attachments, 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.

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

ORDER

The unfair practice charge in Case No. LA-CE-4809-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member Neuwald joined in this Decision,

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor
PUBLIC EMPLOYM,ENT RELATIONS BOARD

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

July 28, 2005

Michael A. Morguess, Attorney
Lackie & Dameier LLP
367 North Second Avenue
Upland, CA 91786

Re: Los Angeles School Police Association v. Los Angeles Unified School District
Unfair Practice Charge No. LA-CE-4809-E
DISMISSAL LETTER

Dear Mr. Morguess:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on October 27, 2004. The Los Angeles School Police Association alleges that the Los Angeles Unified School District violated the Educational Employment Relations Act (EERA)[1] by transferring bargaining unit work out of the unit. On January 27, 2005[2], the Association filed a First Amended Charge alleging the same.

1 indicated to you in my attached letter dated June 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 were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to June 27, the charge would be dismissed. You contacted me by phone on June 24, and requested an extension to file your amended charge up to and including July 6. I granted your request and I asked you to send me a letter confirming our discussion. That same day, 1 received a facsimile copy of a letter from you confirming the July 6 date for filing an amended charge. The letter also requested I review my warning letter to ensure that the contents of the letter considered the First Amended Charge, not the original Charge as filed. Again on June 24, I reviewed the entire file and contacted you. I clearly indicated to you that the warning letter contemplated the First Amended Charge as filed.

On July 5, you again contacted me by phone and requested another extension to file your amended charge up to and including July 8. I granted your request and I again asked you to send me a letter confirming our discussion. On July 5, I received a facsimile copy of a letter from you confirming the July 8 date for filing an amended charge.

[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] All dates hereafter refer to 2005 unless otherwise noted.

On July 7, I received a facsimile copy of the Second Amended Charge. Again, the charge alleged a transfer of bargaining unit work out of the unit. The Second Amended Charge also alleges the warning letter only considers the facts as alleged in the original Unfair Practice Charge and does not seem to consider the facts as alleged in the First Amended Charge. However, you and I resolved this allegation in a telephone conversation on June 24 wherein I explained to you my reasoning and the law applied to the facts of the First Amended Charge as discussed in the warning letter.

1 have considered the facts as alleged in the original Unfair Practice Charge, the First Amended Charge, and the Second Amended Charge and taken them as true. (Mark West Union School District (1993) PERB Decision No. 1011.) At this point, the Association has filed three versions of the facts to support the allegation of unilateral change - transfer of bargaining unit work. Unfortunately, the three variations of the alleged facts confuse what the "past practice" has been.

In the original charge, the Association alleges:

> The District has a long-term past practice of using a minimum number of school police officers to provide police services at District high school football games. In some cases, the District has used some County of Los Angeles Deputy Sheriffs to supplement the school police officers' show of force. Charging Party has recently learned of an attempted unilateral change by the District to that practice that by changing the ratio of District School Police Officers to County Deputy Sheriffs such that the District is now contracting out work performed by members of Charging Party to the County of Los Angeles Sheriffs Department.

Here, the facts suggest both the school police officers and the LA sheriff and police officers are used as security at the District high school football games. The Association alleges the District is changing policy and increasing the number of outside police officers and decreasing the number of Association security personnel assigned to each high school football game.

In the First Amended Charge, the Association alleges:

> In some cases, the County of Los Angeles Deputy Sheriffs or City of Los Angeles Police Department (LAPD) officers, in the course of their duties, may have supplemented the school police officers' show of force and have worked outside the actual facility (meaning not effecting crowd control of the game), including escorting buses or handling other peripheral matters. However, in no case in the past has the District actually contracted with or paid outside officers (including Los Angeles

> County Deputy Sheriffs or LAPD) for their services. In the past there services appear to be merely incidental.

Here, the Association alleges Los Angeles police and sheriff may have "worked" security at high school football games, but not at the direction of the District and only outside the football stadium.

In the Second Amended Charge, the Association alleges:

> . . . [I]n no case in the past has the District actually used, employed or hired outside law enforcement to actually work the "event" or has the District assigned outside law enforcement to the games such that it would affect the number of members of Charging Party assigned to the game. In other words, if local jurisdictions determined, on their own, to somehow have their own law enforcement officers assigned to some impact (sic) from the game (and not the game itself), doing so did not affect the number of school police officers the District would assign.

Here, the Association alleges the District has never hired Los Angeles police or sheriffs to work security at high school football games such that would affect the number of Association security personnel assigned to the game.

On July 26, at my request, you and I spoke further about the allegations. I inquired about the alleged past practice. You said, in the past, the District only used outside law enforcement to supplement security at the District high school football games, but the District is now actively using LA police and sheriffs to work security at football games and supplementing the security staff with Association members. Upon further inquiry, you were unable to be specific about whether the District had hired/paid LA police and sheriffs in the past; what games the allegations were meant to address; or if, and how, the LA police and sheriffs were being paid now.

First, the Association alleges the District hired both outside police and sheriff and Association personnel to work security at District high school football games. Then, the Association alleges the District did not hire or pay LA sheriff and police officers to maintain security at District high school football games, but rather, LA sheriff and police officers in attendance at District high school football games performed merely incidental security services outside the games. But whether paid by the District or not, the facts allege LA sheriff and police officers have been a presence and worked "security" at District high school football games for some time. In other words, the Association security personnel and the LA sheriff and police have overlapping security duties at District high school football games.

In the Second Amended Charge, the Association alleges the unilateral change as the District now paying LA sheriff and police officers to work security at high school football games. The Association further alleges LA sheriff and police officers are now being asked to work crowd

control inside the football stadium, and not simply security and traffic control outside the football stadium.

The facts suggest LA sheriff and police have performed security duty along side the Association security personnel for some time. The facts do not allege a discernible difference between the security duties of the two groups. For example, security personnel control crowds both inside and outside the football stadium. The Association docs not allege that Association security personnel have ceased to perform security at District football games or been replaced exclusively by the LA sheriff and police. Rather, the facts suggest LA sheriff and police continue to perform security duty along side the Association security personnel. The ratio of Association security personnel to LA sheriff and police officers may have changed, but under Eureka City School District (1985) PERB Decision No. 481, a change in ratio is not a violation of the MMBA. In this case, the facts do not support an allegation of unilateral change transfer of bargaining unit work. Based on the facts and reasons contained herein and in my June 17 warning letter, I am dismissing the Charge.

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 ease 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] [3]PERB's Regulations are codified at California Code of Regulations, title 8, section 31003 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
Erin. Koch-Goodman
Regional Attorney

Attachment

cc: Holly R. Lake, Attorney

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor
PUBLIC EMPLOYMENT RELATIONS BOARD
Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8386
Fax: (916) 327-6377

June 17, 2005

Michael A. Morguess, Attorney
Lackie & Dameier LLP
367 North Second Avenue
Upland, CA 91786

Re: Los Angeles School Police Association v. Los Angeles Unified School District
Unfair Practice Charge No, LA-CE-4809-E
WARNING LETTER

Dear Mr. Morguess:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on October 27, 2004.[1] The Los Angeles School Police Association alleges that the Los Angeles Unified School District violated the Educational Employment Relations Act (EERA)[2] by transferring bargaining unit work out of the unit.

The parties are subject to a collective bargaining agreement. The Association alleges that the District has a long term past practice of using a minimum number of school police officers to provide police services at District high school football games. The Association concedes that the District has used County of Los Angeles Sheriff Deputies (LASD) to supplement the school police officers' show of force at District high school football games in the past as well. The Association does not believe that the District is reducing the overall number of security personnel at each District high school football game, but rather, the District is reducing the number of school police officers and increasing the number of LASD personnel at each game. On October 13, Association Counsel, Dieter Dammeier, sent a letter to the District indicating that "contracting out bargaining unit work without meeting and conferring amounts to an unfair labor practice pursuant to the Educational Employee Relations Act."

On October 28, a District football game between Banning High School and Carson High School took place at the Home Depot Center. Eight (8) school police officers worked the game as well as an unspecified number of LASD personnel paid for by the Home Depot Center. The Association alleges that in the past 16-20 school police officers were offered slots to patrol the same game.

On November 6, a football game between Roosevelt High School and Garfield High School took place at East Los Angeles College. Again eight (8) school police officers worked the

[1] All dates hereafter refer to 2004 unless otherwise noted.

[2] HERA 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.

game as well as an unspecified number of LASD personnel paid for by East Los Angeles College. The Association alleges that in the past 30 school police officer were offered slots to patrol the same game.

The Association alleges that the District has committed a unilateral change by contracting out bargaining unit work. 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.)

PERB has held that the transfer of work from bargaining unit employees to those in a different or no bargaining unit is a subject within the scope of representation. (Rialto Unified School District (1982) PERB Decision No. 209.) However, not all transfers of bargaining unit work are negotiable. In Eureka City Schools (1985) PERB Decision No. 481, the Board held that a change in the distribution of duties between unit and non-unit employees, where there is an established practice of overlapping duties, does not always give rise to a duty to bargain. In Eureka, the Board stated that:

> In our view, in order to prevail on a unilateral transfer of work theory, the charging party must establish, as a threshold matter, that duties were, in fact, transferred out of the unit; that is, that unit employees ceased to perform work which they had previously performed or that nonunit employees began to perform duties previously performed exclusively by unit employees. However, where, as here, unit and nonunit employees have traditionally had overlapping duties, an employer does not violate its duty to negotiate in good faith merely by increasing the quantity of work which nonunit employees perform and decreasing the quantity of work which unit employees perform. [Emphasis in original; footnote omitted.]

A duty to bargain may still be found where there are negotiable effects such as a reduction of hours in the bargaining unit positions (Id.) or if unit employees cease to perform the overlapping work. (Calistoga Joint Unified School District (1989) PERB Decision No. 744.)

In this case, it seems the past practice has been to employ LASD personnel, as well as school police officers, to patrol District high school football games. The Association does not allege that bargaining unit employees have ceased to perform work which they had previously performed or that LASD personnel began to perform duties previously performed exclusively by the school police officers. Here, it seems that unit and nonunit employees have traditionally

had overlapping duties, and an employer does not violate its duty to negotiate in good faith merely by increasing the quantity of work which nonunit employees perform and decreasing the quantity of work which unit employees perform. Eureka, *supra.*

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 27, 2005, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Erin R. Koch-Goodman
Regional Attorney

EKG