

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



GROSSMONT UNION HIGH SCHOOL
DISTRICT,

Charging Party,

v.

GROSSMONT EDUCATION ASSOCIATION,

Respondent.

Case No.LA-CO-1200-E

PERB Decision No. 1859

September 19, 2006

Appearances: Parham & Rajcic by Stefanie K. Vaudreuil, Attorney, for Grossmont Union High School District; Tosdal, Smith, Steiner & Wax by Fern M. Steiner, Attorney, for Grossmont Education Association.

Before Duncan, Chairman; Shek and Neuwald, Members.

DECISION

NEUWALD, Member: This case is before the Public Employment Relations Board (Board) on appeal by the Grossmont Union High School District (District) of a Board agent's dismissal (attached) of an unfair practice charge. The unfair practice charge alleged that the Grossmont Education Association (Association) violated the Educational Employment Relations Act (EERA)¹ by engaging in a sickout on April 25, 2005, while the parties were undergoing impasse procedures. Specifically, the charge alleged that the Association either planned, organized or implicitly condoned a sickout when an unusually large number of union

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

members were absent only at the schools where members of the bargaining team worked. The District alleged that this conduct constituted a violation of EERA section 3543.6(d).²

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

ORDER

The unfair practice charge in Case No. LA-CO-1200-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member Shek joined in this Decision.

²EERA section 3543.6(d) states, in pertinent part:

It shall be unlawful for an employee organization to:

(d) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Blvd., Suite 1435
Los Angeles, CA 90010-2334
Telephone: (213) 736-2907
Fax: (213) 736-4901



June 29, 2005

Ms. Stefanie K. Vaudreuil, Attorney
Law Offices of Parham & Rajcic
23195 La Cadena Drive, Suite 103
Laguna Hills, CA 92653-1483

Re: Grossmont Union High School District v. Grossmont Education Association
Unfair Practice Charge No. LA-CO-1200-E
DISMISSAL LETTER

Dear Ms. Vaudreuil:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on May 10, 2005. The Grossmont Union High School District ("District") alleges that the Grossmont Education Association ("GEA") violated the Educational Employment Relations Act (EERA)¹ by engaging in sickouts while the parties were engaged in the impasse procedures.

I indicated to you in my attached letter dated June 1, 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.

An amended charge was received by PERB on June 22, 2005. It states that GEA targeted five out of the thirteen high schools in the District for the one-day sickout. The members of the GEA bargaining team are employed at the targeted schools, but not at any of the other eight schools in the District. The amended charge lists the faculty absence rate for the five targeted high schools on April 25 and the names of the bargaining team members employed at each school. The District argues that because the schools with unusually high absences employ each of the bargaining team members while those schools without bargaining team members did not experience any attendance anomaly, "it is evident that GEA either planned, organized, or implicitly condoned the sickout."

Based on the above facts, the amended charge fails to state a prime facie case for the reasons stated below.

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.

Although the statistics provides some correlation between the presence of GEA bargaining team members and the high teacher absence rate, the amended charge again fails to offer sufficient evidence showing that GEA planned, organized or authorized the sickout. While it is possible that GEA played a role in the April 25 sickout, its liability must be found upon proof, not mere possibilities. (Compton Community College District (1989) PERB Decision No. 728). Examples of evidence that would tend to support GEA's liability may include flyers, placards or handouts linking GEA to the sickout, minutes from the governing board's ratification of the action, and speeches made by GEA officials indicating responsibility for or authorization of the action. Id. Here, statistical correlation alone is not enough to establish an inference that GEA, or its agents, either planned or organized the sickout.

The District also asserts that GEA may have "implicitly condoned" the sickout. In this respect, a union cannot be held liable for its failure to renounce the sickout, or to urge employees to return to work unless there are contractual provisions in effect at the time of the sickout which required the union to renounce the action, or evidence that the employer asked the union to make efforts to secure the return of employees. (See Compton Community College District). Here, since the District did not provide any evidence regarding GEA's obligation to renounce the job action, GEA's liability cannot be found solely on the ground that it implicitly condoned the sickout.

For these reasons the amend charge does not state a prime facie case. Therefore, I am dismissing the Unfair Practice Charge.

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. (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

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

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

Dennis K. Lee
Board Agent

Attachment

cc: Fern M. Steiner

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
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June 1, 2005

Ms. Stefanie K. Vaudreuil, Attorney
Law Offices of Parham & Rajcic
23195 La Cadena Drive, Suite 103
Laguna Hills, CA 92653-1483

Re: Grossmont Union High School District v. Grossmont Education Association
Unfair Practice Charge No. LA-CO-1200-E
WARNING LETTER

Dear Ms. Vaudreuil:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on May 10, 2005. The Grossmont Union High School District (District) alleges that the Grossmont Education Association (Association) violated the Educational Employment Relations Act (EERA)¹ by engaging in sickouts while the parties were undergoing impasse procedures.

The charge indicates that on April 25, 2005, approximately three hundred members of the Association called in sick—a number that is substantially greater than the normal rate of absence. The charge further alleges that the Association either planned, organized or implicitly condoned the sickout in violation of EERA section 3543.6(d). The District and the Association are currently engaged in impasse procedures and were engaged in impasse procedures when the sickout occurred on April 25, 2005.

Based on the above facts, the charge fails to state a prime facie case for the reasons stated below.

In order for the District to prevail on its charge that the Association was in violation of EERA section 3543.6(d), it needs to prove that 1) that a sickout occurred; 2) that it occurred prior to the exhaustion of the impasse procedure; and 3) that the Association planned and/or authorized the sickout. (See Compton Community College District (1989) PERB Decision No. 728).

It is arguable that the first two elements are present because a disproportionately large number of Association members called in sick on April 25, 2005 while the parties were still at impasses. However, the District failed to clearly allege and support the third element with the specificity required by PERB Regulation.

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.

PERB Regulation 32615(a)(5) requires, inter alia, that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." Thus, the charging party's burden includes alleging the "who, what, when, where and how" of an unfair practice. (State of California ("Department of Food and Agriculture) (1994) PERB Decision No. 1071-S, citing United Teachers-Los Angeles (Ragsdale) (1992) PERB Decision No. 944.) Mere legal conclusions are not sufficient to state a prima facie case. (Ibid.; Charter Oak Unified School District (1991) PERB Decision No. 873.)

Here, the charge only states that "it is the District's contention that [the Association] either planned, organized, or implicitly condoned the sick out in violation of Government Code section 3543.6(d)". Besides this conclusory statement, the District did not provide any additional evidence that would tend to support the Association liability—evidence that agents of the union "ratified, instigated, encouraged, condoned, or in any way directed" the sickout. (See North River Energy Corp. v. United Mine Workers, 664 F. 2d 1184 (11th Cir. 1981)).

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 13, 2005, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Dennis K. Lee
Board Agent

DKL