

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



IFPTE, LOCAL 21, AFL-CIO,

Charging Party,

v.

CITY & COUNTY OF SAN FRANCISCO
(INTERNATIONAL AIRPORT),

Respondent.

Case No. SF-CE-420-M

PERB Decision No. 1932-M

December 21, 2007

Appearances: Davis & Reno by Duane W. Reno, Attorney, for IFPTE, Local 21, AFL-CIO; Martin R. Gran, Deputy City Attorney, for City & County of San Francisco (International Airport).

Before Shek, McKeag and Wesley, Members.

DECISION

SHEK, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by IFPTE, Local 21, AFL-CIO (IFPTE) of a Board agent's dismissal (attached) of its unfair practice charge. The charge alleged that the City & County of San Francisco (CCSF) violated the Meyers-Milias-Brown Act (MMBA)¹ by unilaterally reassigning an employee to a different project. IFPTE alleged that this conduct constituted a unilateral change of its reassignment and transfer policy in violation of the duty to meet and confer in good faith under MMBA sections 3503, 3504.5, and 3505, and PERB Regulation 32603(c).²

¹MMBA is codified at Government Code section 3500, et seq.

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

The Board has reviewed the entire record in this matter, including but not limited to the unfair practice charge, CCSF's position statement, the warning and dismissal letters, IFPTE's appeal of dismissal and CCSF's response. Based upon this review, the Board finds that the warning and dismissal letters are free from prejudicial error, and adopts them as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. SF-CE-420-M is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Members McKeag and Wesley joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1022
Fax: (510) 622-1027



August 8, 2007

Duane Reno, Attorney
Davis Reno
22 Battery Street, Suite 1000
San Francisco, CA 94111-5524

Re: IFPTE, Local 21, AFL-CIO v. City & County of San Francisco (International Airport)
Unfair Practice Charge No. SF-CE-420-M; First Amended Charge
DISMISSAL LETTER

Dear Mr. Reno:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on February 13, 2007. The IFPTE, Local 21, AFL-CIO alleges that the City & County of San Francisco (International Airport) violated the Meyers-Miliias-Brown Act (MMBA)¹ by changing the work assignment of employee Ed Stein, which Charging Party contends constitutes a unilateral change.

I informed you in my attached letter dated April 16, 2007, 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 April 23, 2007, the charge would be dismissed.

On April 23, 2007, I received a first amended charge. The amended charge adds additional facts, which are summarized below.

Local 21 is the exclusive bargaining representative for the City's Professional and Technical employees. Included within this unit is the classification of Contract Compliance Officer. The City and Local 21 are parties to a collective bargaining agreement that expires on June 30, 2009. With regard to "reassignments" Article II(F) defines the term as follows:

Except in cases of urgent need, each City department shall post notices of vacancies in a prominent location in the department, and/or at each separate work location of the department, for a period of not less than five (5) working days in order to afford employees interested in reassignment an opportunity to apply for a vacant position. Each such notice shall describe the

¹ The MMBA is codified at Government Code section 3500 et seq. The text of the MMBA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

classification of the position to be filled, the physical location of the position, its starting and quitting time, and a general description of the work to be performed.

With regard to Transfers, Section 114.32.1 of the City's Civil Service Rules, provides as follows:

A transfer of a permanent appointee who has completed the probationary period to a position in the same class under another appointing officer shall be requested on the form prescribed by the Human Resources Director.

Ed Stein is employed by the City as a Contract Compliance Officer at the San Francisco International Airport. Mr. Stein's job duties require him to oversee and enforce the performance of public works construction contracts between the City and private construction companies. As such, Mr. Stein shadows the private construction companies to ensure compliance with City contracts and safety standards.

On August 21, 2006, Jeffrey Yee, the owner of a private construction company that Mr. Stein was monitoring, sent a letter to Airport administrators regarding Mr. Stein's alleged inappropriate behavior. Upon receiving this complaint, the Airport administration placed Mr. Stein on another project at the airport. Charging Party contends this conduct constitutes a unilateral change in the transfer policy. More specifically, Charging Party contends that in previous cases, an employee was not immediately removed from a project upon receipt of a complaint.

Mr. Stein's new assignment requires him to spend approximately seven hours per day at the north end of the airport overseeing the repair of a water main between taxiways S and U. Prior to this new assignment, Mr. Stein spent approximately five hours per day at the south end of the airport overseeing the installation of security cameras and two hours per day supervising the electrical upgrade to Terminal 3.

Charging Party also notes that Mr. Stein was neither verbally nor formally reprimanded for his work performance, and believes the City's removal of Mr. Stein from the electrical work will allow substandard work by contractors.

Based on the facts provided in the original and amended charges, the charge still fails to state a prima facie violation of the MMBA, for the reasons provided below.

Charging Party contends the City unilaterally changed its transfer policy in removing Mr. Stein from his previous project. In determining whether a party has violated Government Code section 3505 and PERB Regulation 32603(c),² PERB utilizes either the "per se" or "totality of

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

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.)³ 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. (Vernon Fire Fighters v. City of Vernon (1980) 107 Cal.App.3d 802 [165 Cal.Rptr. 908]; Walnut Valley Unified School District (1981) PERB Decision No. 160; San Joaquin County Employees Association v. City of Stockton (1984) 161 Cal.App.3d 813; Grant Joint Union High School District (1982) PERB Decision No. 196.)

PERB has consistently held that the assignment of job duties that are reasonably related to one's classification are not a mandatory subject of bargaining. (City and County of San Francisco (2004) PERB Decision No. 1608-M; Davis Joint Unified School District (1984) PERB Decision No. 393.) Thus, the new job assignment given to Mr. Stein is not a matter within the scope of representation. Mr. Stein continued to work at the same location, is subject to the same working conditions and continues to perform the identical work as in the prior assignment. As such, the City's decision to give Mr. Stein a new assignment is not a matter within scope and thus does not constitute a unilateral change.

Although Charging Party contends the City has "transferred" Mr. Stein, it must be noted that Mr. Stein was neither transferred nor reassigned. Pursuant to the language quoted above, a transfer or reassignment requires a new physical location or new appointing officer. A transfer does not occur when an employee is simply given a new job assignment. Herein, Mr. Stein was given a new assignment to monitor another private construction firm. The new assignment does not place Mr. Stein in another department or even in another location. As such, Charging Party's characterization of the City's conduct is inaccurate.

Right to Appeal

Pursuant to PERB Regulations,⁴ 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 during a regular PERB business day. (Regulations 32135(a) and 32130; see also Government Code section 11020(a).) A document is also considered "filed" when received by facsimile transmission before the close of business

³ When interpreting the MMBA, it is appropriate to take guidance from cases interpreting the National Labor Relations Act and California labor relations statutes with parallel provisions. (Firefighters Union v. City of Vallejo (1974) 12 Cal.3d 608.)

⁴ PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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 95811-4124
(916) 322-8231
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.) The document will be considered properly "served" when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also 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.)

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August 8, 2007
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Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

TAMI R. BOGERT
General Counsel

By
Kristin L. Rosi
Regional Attorney

Attachment

cc: Martin Gran

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1022
Fax: (510) 622-1027



April 16, 2007

Duane Reno, Attorney
Davis Reno
22 Battery Street, Suite 1000
San Francisco, CA 94111-5524

Re: IFPTE, Local 21, AFL-CIO v. City & County of San Francisco (International Airport)
Unfair Practice Charge No. SF-CE-420-M
WARNING LETTER

Dear Mr. Reno:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on February 13, 2007. The IFPTE, Local 21, AFL-CIO alleges that the City & County of San Francisco (International Airport) violated the Meyers-Miliias-Brown Act (MMBA)¹ by changing the work assignment of employee Ed Stein, which Charging Party contends constitutes a unilateral change.

Investigation of the charge revealed the following. Local 21 is the exclusive bargaining representative for the City's Professional and Technical employees. Included within this unit is the classification of Contract Compliance Officer. The City and Local 21 are parties to a collective bargaining agreement that expires on June 30, 2009. With regard to "reassignments" Article II(F) defines the term as follows:

Except in cases of urgent need, each City department shall post notices of vacancies in a prominent location in the department, and/or at each separate work location of the department, for a period of not less than five (5) working days in order to afford employees interested in reassignment an opportunity to apply for a vacant position. Each such notice shall describe the classification of the position to be filled, the physical location of the position, its starting and quitting time, and a general description of the work to be performed.

With regard to Transfers, Section 114.32.1 of the City's Civil Service Rules, provides as follows:

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A transfer of a permanent appointee who has completed the probationary period to a position in the same class under another appointing officer shall be requested on the form prescribed by the Human Resources Director.

Mr. Stein is employed by the City as a Contract Compliance Officer at the San Francisco International Airport. Mr. Stein's job duties require him to oversee and enforce the performance of public works construction contracts between the City and private construction companies. As such, Mr. Stein shadows the private construction companies to ensure compliance with City contracts and safety standards.

On August 21, 2006, Jeffrey Yee, the owner of a private construction company that Mr. Stein was monitoring, sent a letter to Airport administrators regarding Mr. Stein's alleged inappropriate behavior. Upon receiving this complaint, the Airport administration placed Mr. Stein on another project at the airport. Charging Party contends this conduct constitutes a unilateral change in the transfer policy. More specifically, Charging Party contends that in previous cases, an employee was not immediately removed from a project upon receipt of a complaint.

Based on the above stated facts, the charge as presently written fails to state a prima facie violation of the MMBA, for the reasons provided below.

Charging Party contends the City unilaterally changed its transfer policy in removing Mr. Stein from his previous project. In determining whether a party has violated Government Code section 3505 and PERB Regulation 32603(c),² 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.)³ 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. (Vernon Fire Fighters v. City of Vernon (1980) 107 Cal.App.3d 802 [165 Cal.Rptr. 908]; Walnut Valley Unified School District (1981) PERB Decision No. 160; San Joaquin County Employees Association v. City of Stockton (1984) 161 Cal.App.3d 813; Grant Joint Union High School District (1982) PERB Decision No. 196.)

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PERB Decision No. 393.) Thus, the new job assignment given to Mr. Stein is not a matter within the scope of representation. Mr. Stein continued to work at the same location, is subject to the same working conditions and continues to perform the identical work as in the prior assignment. As such, the City's decision to give Mr. Stein an new assignment is not a matter within scope and thus cannot constitute a unilateral change.

Although Charging Party contends the City has "transferred" Mr. Stein, it must be noted that Mr. Stein was neither transferred nor reassigned. Pursuant to the language quoted above, a transfer or reassignment requires a new physical location or new appointing officer. A transfer does not occur when an employee is simply given a new job assignment. Herein, Mr. Stein was given a new assignment to monitor another private construction firm. The new assignment does not place Mr. Stein in another department or even in another location. As such, Charging Party's characterization of the City's conduct is inaccurate.

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 April 23, 2007, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Kristin L. Rosi
Regional Attorney

KLR

