

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CORNELIU SARCA,

Complainant,

and

CALIFORNIA STATE UNIVERSITY
EMPLOYEES UNION, SEIU LOCAL 2579
CSEA,

Respondent.

Case No. LA-FS-8-H

Administrative Appeal

PERB Order No. Ad-351-H
March 2, 2006

Appearance: Corneliu Sarca, on his own behalf.

Before Shek, McKeag and Neuwald, Members.

DECISION

McKEAG, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by Corneliu Sacra (Sarca) of a Board agent's dismissal of his petition to compel compliance with Government Code section 3587 (Petition) (attached), a provision contained in the Higher Education Employer-Employee Relations Act (HEERA).¹

The Board has reviewed the entire record in this matter, including the Petition, the documents produced in response to the Petition, the Board agent's dismissal and Sarca's appeal. Based on our review of the record in this matter and the applicable law, the Board finds the Board agent's dismissal to be free of prejudicial error and adopts it as a decision of the Board itself for the reasons set forth below.

¹HEERA is codified at Government Code section 3560, et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

FACTS

Sarca is an employee of the California State University and a member of Bargaining Unit 9. On April 12, 2005, and again on May 23, 2005, Sacra sent letters to the California State Employees Association (CSEA) requesting its Financial Status Report for the fiscal year ending December 31, 2004. Dissatisfied with CSEA's response, Sarca filed the Petition to compel CSEA's compliance with Government Code section 3587 (Itemized Record of Financial Transactions) and PERB Regulation 32125² (Financial Reports).

In response to the Petition, CSEA, by letter dated June 22, 2005, provided Sarca with a copy of CSEA's June 2005 notice to fair share fee payers. Included in that report was an independent auditors' report prepared by Hood & Strong LLP, as well as a statement of operating expenses by activity and the allocation between chargeable and non-chargeable expenses for the year ending December 31, 2004. In addition, on July 5, 2005, CSEA provided PERB, with a copy to Sarca, copies often (10) financial statements for the California State University Division of CSEA (CSUEU) for 2004, and a copy of CSEA's 2004-05 budget. In addition, CSEA provided five (5) independent audits relating to the 2004 expenditures of CSUEU, CSEA and other CSEA rank and file affiliates. In light of this production of documents, the Board agent dismissed the Petition.

Sarca appealed the dismissal. His objections to the dismissal can be best summarized as follows:

1. The fee calculation cannot be evaluated without a financial report;
2. CSEA had an obligation to provide him with the documents; and
3. The calculation of the fee based exclusively on expenditures is in contradiction with Supreme Court rulings.

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

DISCUSSION

A. Production of Documents

Sarca filed the Petition to require CSEA's production of the financial records described in Government Code section 3587. A petition to compel, however, is not an unfair practice charge. Rather, it is a statutory mechanism to compel compliance with the disclosure requirements for these records. (See, Service Employees International Union, Local 99 (Kimmett) (1979) PERB Decision No. 106.) Thus, if the records satisfy the requirements of Section 3587, the production of those records resolves the issue(s) raised by a petition to compel. In such cases, the petition is properly dismissed.

In the instant case, CSEA provided Sarca with a considerable amount of financial information. Consequently, the sole issue before the Board is whether the information provided by CSEA complies with the requirements of Section 3587.

B. Adequacy of Financial Information

Section 3587 provides as follows:

Every recognized or certified employee organization shall keep an adequate itemized record of its financial transactions and shall make available annually, to the board and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by the president and treasurer or comparable officers. In the event of failure of compliance with this section, any employee within the organization may petition the board for an order compelling such compliance, or the board may issue such compliance order on its motion.

In the present case, CSEA provided its budget for fiscal year 2004-05, as well as independent auditors' reports for CSEA and its subsidiaries that included financial statements plus statements of operating expenses by activity and the allocation between chargeable and non-chargeable expenses for the year ending December 31, 2004. In addition, CSEA produced

numerous financial status reports for both CSEA and SEIU, Local 1000. When taken together, these materials clearly meet the requirements of Section 3587.

In his appeal, Sarca alleged that "the fee calculation can not [sic] be evaluated without a financial report." The documents produced by CSEA, however, met the requirements of Section 3587. Indeed, apparently based on the information provided, Sarca prepared a spreadsheet that disputed CSEA's agency fee calculation. Because adequate financial reports were produced, CSEA fully discharged its obligations pursuant to Section 3587. Accordingly, the Board agent properly dismissed this case.

C. Remaining Exceptions³

In addition to his documents production exception, Sarca identified the following two additional grounds for appeal: (1) CSEA had an obligation to provide him with financial reports pursuant to Section 3587; and (2) CSEA's calculation of the fee based exclusively on expenditures is in contradiction with Supreme Court rulings.

1. Sarca's Entitlement to the Records is Not at Issue

With regard to his first ground for appeal, the documents were produced. Accordingly, the question of Sarca's entitlement to these documents is not an issue before the Board. Since the Board does not issue advisory opinions (Santa Clarita Community College District (College of the Canyons) (2003) PERB Decision No. 1506), this issue need not be addressed at this time.

³Appeals of Board agent dismissals are governed by the exception procedures set forth in PERB Regulation 32300. The instant case, which is an appeal of an administrative decision, is governed by the appeal procedures set forth in PERB Regulation 32360. Accordingly, the "exceptions" described by Sarca in his appeal are properly characterized as grounds for appeal.

2. Sarca's Challenge to the Fee Calculation is a New Allegation

Sarca's second ground for appeal regarding CSEA's calculation of the fee also lacks merit. As discussed above, petitions to compel are document production tools, not unfair practice charges. Consequently, once documents meeting the minimum requirements of Section 3587 are produced, the responding party's obligation has been fully discharged and dismissal is appropriate. Simply put, petitions to compel are not the appropriate vehicle to challenge agency fee calculations.⁴

This exception also lacks merit because it is entirely unrelated to the production of documents pursuant to Section 3587. Thus, it is not an "exception"; rather, it is a new allegation. The Petition, however, is silent regarding the calculation of the fee. Since this issue was not set forth in the charge, CSEA had no notice of the issue. As a result, the issue was neither litigated nor even addressed by either the Board agent or CSEA. Accordingly, this issue is not properly before the Board and will not be considered.

It is noteworthy that even if the Board considered the merits of Sarca's second ground for appeal, challenges to agency fee calculations are governed by PERB Regulation 32994. This regulation requires fee payers to file timely objections with their exclusive representative after receiving a Hudson⁵ notice and participating in a arbitration proceeding regarding the reasonableness of the fee. Moreover, the regulations expressly provide that "no complaint shall issue until the agency fee objector has first exhausted the exclusive representative's Agency Fee Appeal Procedure." (PERB Reg. 32994.) Since there is nothing in the record to

⁴Sarca has filed two separate unfair practice charges challenging CSEA's agency fee calculations. (California State Employees Association, CSU Division (Sarca) (2004) PERB Decision No. 1626-H; California State Employees Association (Sarca) (2006) PERB Decision No. 1813-H.) Consequently, Sarca is well aware of the correct procedure for challenging such calculations.

⁵Chicago Teachers Union, Local 1 v. Hudson (1986) 475 U.S. 292 [121 LRRM 2793] (Hudson).

support the fact that Sarca exhausted CSEA's agency fee appeal procedure, Sarca's second ground for appeal must be rejected.

ORDER

The petition to compel compliance in Case No. LA-FS-8-H is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Shek and Neuwald joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8387
Fax: (916)327-6377



July 13,2005

Corneliu V. Sarca
17950 Lassen Street, B-15
Northridge, CA 91325

Re: California State University
Case No. LA-FS-8-H

Dear Mr. Sarca:

On June 9, 2005, you, as a member of Bargaining Unit 9 at California State University, filed a request with PERB seeking to compel the exclusive representative California State Employees Association (CSEA) to submit a financial report as required by the Higher Education Employer-Employee Relations Act (HEERA) Section 3587.¹ On July 5, 2005, CSEA provided a detailed financial statement in the form of several documents which included Financial Status Report as of December 31, 2004 as authored by Debbie Cotton, Secretary-Treasurer. A copy of this material was forwarded to you on that date

Based on the documents provided by Mr. Gibbons, attorney for CSEA, I find that CSEA is in compliance with HEERA section 3587 and hereby DISMISS your complaint.

Right of Appeal

An appeal of this decision to the Board itself may be made within ten (10) calendar days following the date of service of this decision. (Regulation 32360.) To be timely filed, the

¹ This section of HEERA provides:

Every recognized or certified employee organization shall keep an adequate itemized record of its financial transactions and shall make available annually, to the board and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by the president and treasurer or comparable officers. In the event of failure of compliance with this section, any employee within the organization may petition the board for an order compelling such compliance, or the board may issue such compliance order on its motion.

original and five (5) copies of any appeal must be filed with the Board itself at the following address:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street, Suite 200
Sacramento, CA 95814-4174
FAX: (916) 327-7960

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. (Regulation 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

The appeal must state the specific issues of procedure, fact, law or rationale that are appealed and must state the grounds for the appeal (Regulation 32360(c)). An appeal will not automatically prevent the Board from proceeding in this case. A party seeking a stay of any activity may file such a request with its administrative appeal, and must include all pertinent facts and justifications for the request (Regulation 32370).

If a timely appeal is filed, any other party may file with the Board an original and five (5) copies of a response to the appeal within ten (10) calendar days following the date of service of the appeal (Regulation 32375).

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding and on the Sacramento Regional Office regional office. 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 an appeal or opposition to an appeal 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 calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known,

LA-FS-8-H
July 13, 2005
Page 3

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).

Sincerely,

Roger Smith
Labor Relations Specialist

cc: Teven Laxer
Harry J. Gibbons