STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

JULES KIMMETT, Charging Party, APPELLANT, v. SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 99, Respondent, In The Los Angeles Community College District.	)	Case No. LA-CO-27 LA-CO-31 LA-CO-32 LA-CO-33 LA-CO-34 PERB Decision No. 106 October 19, 1979

Appearances: Jules Kimmett, in pro per; Willie Griffin, Secretary-Treasurer for Service Employees International Union, Local 99.

Before: Gluck, Chairperson; Gonzales, Member.[1]

DECISION

In this case, Jules Kimmett (hereafter charging party) appeals the attached hearing officer's recommended decision dismissing several unfair practice charges filed against Service Employees International Union, Local 99 (hereafter SEIU). For the reasons set forth below, the Public Employment Relations Board (hereafter PERB or Board) affirms this dismissal.

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[1]Board Member Moore did not participate in this decision.

SEIU is the exclusive representative of a maintenance and operations unit at Los Angeles Community College District (hereafter LACCD), of which charging party, a custodian on the "C" or night shift at Los Angeles Valley College (hereafter LAVC) is a member.

In LA-CO-27, filed August 1, 1977, charging party alleged that SEIU violated section 3543.6(b) of the Educational Employment Relations Act (hereafter EERA)[2] by holding monthly membership meetings on Friday nights at a time when unit members who work "B" and "C" shifts cannot attend. This charge was later amended to allege that SEIU's intentional scheduling of meetings at that time was a deliberate attempt to deny those unit members their "democratic right to participate fully" in the organization.

In LA-CO-31, filed August 29, 1977, charging party alleged that SEIU violated section 3543.6(b) by threatening him with reprisals for filing an unfair practice charge and by preventing him from examining at his seat a financial report which was posted at the meeting hall.

In LA-CO-32, filed September 6, 1977, charging party alleged that SEIU violated section 3543.6(b) by (1)

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[2]The EERA is codified at Government Code section 3540 et seq. Unless otherwise noted, all statutory references are to the Government Code.

discriminating against "B" and "C" shift members by holding a meeting on May 11, 1977, without posting or distributing any notices, and (2) conducting an election among "B" and "C" shift members to select a LAVC representative to the negotiating committee without counting the ballots in front of those members.

In LA-CO-33, filed September 14, 1977, charging party alleged that SEIU violated section 3543.6(b) by failing to send a representative to LAVC to inform "C" night shift employees on the progress of negotiations. He also alleged that three business representatives were ratified at a meeting in which no "B" shift and only one "C" shift employee participated, which constituted "callous indifference" to members.

In LA-CO-34, filed October 3, 1977, charging party alleged that SEIU violated section 3543.6(b) by (1) appointing a new secretary-treasurer at a meeting on May 20, 1977, in which one "C" shift and no "B" shift members participated; and (2) covering up SEIU's financial condition by deleting certain information from the financial report and conducting an internal audit for the preceding six month period instead of the previous three years.

A formal hearing was held on all of these charges before a PERB hearing officer. At the hearing, the hearing officer in effect severed LA-CO-31 from these proceedings for a separate hearing on the claim that SEIU threatened the charging party

with reprisals for his activities under the EERA.[3] With the agreement of charging party, the hearing officer also held in abeyance those parts of the charges involving SEIU's financial reports while the charging party pursued other administrative remedies. However, charging party has raised the financial reporting issues on appeal, and the Board finds it appropriate to dispose of them in this decision.

FACTS

Charging party is a custodian for LAVC, working on the "C" shift, from 10:30 p.m. to 7:00 a.m. There is also a "B" shift from 2:00 p.m. to 10:30 p.m. and an "A" shift earlier in the day. Charging party has been an employee of the Los Angeles Community College District and a member of SEIU, Local 99, since August 1974.

SEIU, Local 99 was certified as the exclusive representative of a maintenance and operations unit at Los Angeles Community College District on May 24, 1977, following an election conducted by PERB on May 17, 1977. SEIU, Local 99 represents approximately 10,500 employees of whom approximately 600 are employed by LACCD.

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[3]Charging party has filed several additional charges, some of which contain allegations similar to those in LA-CO-31. No hearing has been held on these later charges; accordingly, the General Counsel shall consolidate LA-CO-31 with the remaining charges filed by charging party for hearing.

SEIU has scheduled its general membership meetings for the fourth Friday of each month at 8:00 p.m. for at least the past 10 to 12 years. However, the meetings often start later because of the preceding executive board meetings running late. The authority to set the time for the meeting, conferred by the organization's by-laws to the executive board, has long been delegated to the general membership. Twice charging party has made a motion to move the general meetings to Saturday and twice the motion has been defeated. Of SEIU's 10,500 members, approximately 2,500 work evenings and nights.

On May 11, 1977, a meeting was held to discuss upcoming negotiations for the maintenance and operations unit at LACCD. Charging party received no notice of this meeting and testified that no announcements were posted.

On May 24, 1977, an SEIU agent conducted an election among "B" and "C" shift members to select an LAVC representative to SEIU's negotiating team. After collecting the ballots, the SEIU agent left without counting the ballots in front of the persons who had just voted.

From July 2, 1977, until at least the date of the hearing in this case, no SEIU representative visited the "B" and "C" shift custodians at LAVC to report on negotiations. SEIU's secretary-treasurer testified that SEIU representatives do not regularly visit the "B" or "C" shifts at any work location.

On April 22, 1977, the appointment of three business representatives was ratified at a general membership meeting attended by one "C" shift and no "B" shift members. On May 20, 1977, the secretary-treasurer was ratified under the same circumstances.

ISSUES

This case raises two basic issues which relate to all of the unfair practice charges before us:

> (1) Has SEIU breached the duty of fair representation imposed on all exclusive representatives by section 3544.9?
>
> (2) Has SEIU's conduct otherwise discriminated against or interfered with employees in violation of section 3543.6(b)?

This proceeding also raises an issue as to the proper vehicle for processing complaints about SEIU's financial reporting.

DISCUSSION

Duty of Fair Representation[4]

The EERA places on exclusive representatives a statutory duty to fairly represent all employees in the negotiating unit. Section 3544.9 provides:

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[4]Although charging party does not specifically allege that SEIU's conduct has breached its duty to represent fairly all members of the maintenance and operations unit in violation of section 3544.9, many of his charges allege that SEIU has treated certain members of the negotiating unit in a discriminatory fashion. This seems to raise a fair representation issue, as does his appeal, in which he states that unions are "charged with representing each and every

> The employee organization recognized or certified as the exclusive representative for the purpose of meeting and negotiating shall fairly represent each and every employee in the appropriate unit.

The Legislature, adopting a concept originally developed by the United States Supreme Court,[5] recognized that the right of an exclusive representative to be the only employee organization empowered to represent unit members in their employment relations with the public school employer[6] carries

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employee." We find that his allegations raise an issue as to whether or not SEIU breached its duty of fair representation.

[5]In Steele v. Louisville and Nashville Railroad (1944) 323 U.S. 192 [15 LRRM 708], the Supreme Court decided that the Railway Labor Act, 45 U.S.C. section 151 et seq., implicitly "expresses the aim of Congress to impose upon the bargaining representative of a craft or class of employees the duty to exercise fairly the power conferred upon it in behalf of all those for whom it acts, without hostile discriminatioin against them." In Ford Motor Co. v. Huffman (1953) 354 U.S. 330, [31 LRRM 2548], the Court applied the same principles to a case arising under the National Labor Relations Act, 29 U.S.C. 151 et seq. Both Steele and Huffman involved negotiation situations. Later cases have developed a duty of fair representation in contract administration and grievance handling: Conley v. Gibson (1957) 355 U.S. 41 [41 LRRM 2089]; Humphrey v. Moore (1964) 375 U.S. 335 [55 LRRM 2031]; Vaca v. Sipes (1967) 386 U.S. 171 [64 LRRM 2369].

[6]Section 3543.1(a) provides in pertinent part:

> . . .[O]nce an employee organization is recognized or certified as the exclusive representative of an appropriate unit pursuant to section 3544.1 or 3544.7, respectively, only that employee organization may represent that unit in their employment relations with the public school employers. . . .

with it the obligation to exercise fairly the power conferred upon it on behalf of all those for whom it acts.

The Board has not yet fully defined the parameters of the duty of fair representation under section 3544.9.[7] An essential question in this case is what employee organization activities are subject to the duty of fair representation.

Since the duty of fair representation stems from an exclusive representative's status as the only employee organization that can represent employees in their employment relations, it follows that this duty applies in such representational activities. Thus, an exclusive representative clearly has a duty to represent all employees in the unit fairly in meeting and negotiating, consulting on educational objectives, and administering the written agreement. A question exists, however, as to whether this duty to represent employees fairly extends beyond negotiation and administration of agreements and is applicable to activities which do not directly involve the employer or which are strictly internal union matters. For the reasons that follow, we find that only such activities that have a substantial impact on the relationships of unit members to their employers are subject to that duty.

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[7]See Mt. Diablo Unified School District (8/21/78) PERB Decision No. 68; Redlands Teachers Association (9/25/78) PERB Decision No. 72.

Cases involving the duty of fair representation under the National Labor Relations Act (hereafter NLRA)[8] have generally been limited to an exclusive representative's conduct in negotiating and administering contracts. In Teamsters Local 310 v. NLRB (D.C.Cir. 1978) 587 F.2d 1176 [98 LRRM 3186], the court noted:

> As a general proposition, it is true that a union only breaches its duty of fair representation when it discriminates against employees "in matters affecting their employment." This is because a union's duty of fair representation derives from its status as exclusive bargaining representative under section 9(a) [of the NLRA]; a union, therefore, can be held to represent employees unfairly only in regard to those matters as to which it represents them at all--namely, "rates of pay, wages, hours . . ., or other terms and conditions of employment."

However, certain internal union activities have been found subject to the duty of fair representation. In Retana v. Elevator Operators Union (9th Cir. 1972) 453 F.2d 1018 [79 LRRM

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[8]The NLRA is codified at 29 U.S.C. section 151 et seq. While PERB is not bound by NLRB or federal court cases interpreting the NLRA, it may take cognizance of federal precedent in interpreting provisions of the EERA where the provisions are similar to language in the NLRA. See, e.g., Sweetwater Union High School District (11/23/76) EERB Decision No. 4. While the NLRA contains no language similar to section 3544.9, the rationale for that provision "lies imbedded in the federal precedents under the NLRA." Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608. In Fire Fighters, the California Supreme Court approved the consideration of federal precedents in such a situation if "the federal decisions effectively reflect the same interests as those that prompted the inclusion of the [statutory] language. . . ."

2272], the court examined the disadvantages experienced by Spanish-speaking union members and stated:

> As a practical matter, intra-union conduct could not be wholly excluded from the duty of fair representation for . . . internal union policies and practices may have a substantial impact upon the external relationships of members of the unit to their employer. [79 LRRM at 2276.][9]

But the court goes on to say:

> This does not mean . . . that the union will be exposed to harrassing litigation by dissident members over every arguable decision made in the course of day-to-day functioning of the union. Though the duty of fair representation is broad, not all union practices have a substantial impact upon members rights in relation to the negotiation and administration of the collective bargaining agreement. (Ibid.)

Section 3544.9 contains no language indicating that the Legislature intended that section to apply to internal union activities that do not have a substantial impact on the relationships of unit members to their employers. Therefore, PERB finds that internal union activities that do not have such an impact are not subject to the duty of fair representation.

Most of charging party's allegations involve just such internal union activities. The choice of a general meeting

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[9]See also Deboles v. TWA (3rd Cir. 1977) 552 F.2d 1005 [94 LRRM 3237], cert. den. 434 U.S. 832 [96 LRRM 2514]; Letter Carriers, Branch 6000 v. NLRB (D.C. Cir. 1979) __ F.2d ___ [100 LRRM 2346].

time[10] does not by itself have a great impact on the employee organization's ability to represent all unit members fairly. Therefore, the fact that the meeting time of SEIU's choice is difficult for "B" and "C" shift members to attend does not constitute a breach of SEIU's duty of fair representation to those unit members. Indeed, as the hearing officer observed, "The evidence indicates that the respondent selected Friday nights for its meetings because it is a time most convenient for most employees." (Proposed Decision, p.5.)

Nor does the duty of fair representation include an obligation to hold on-site meetings with unit members to discuss the progress of negotiations.[11] The duty of fair representation implies some consideration of the views of various groups of employees and some access for communication of those views, but there is no requirement that formal procedures be established.[12] Charging party does not allege that the interests of "B" and "C" shift members are not being represented in negotiations with LACCD nor that these interests have been excluded from consideration or treated in a discriminatory manner.

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[10]Case No. LA-CO-27.

[11]Charge No. LA-CO-33

[12]See Letter Carriers, Branch 6000 v. NLRB, supra, ___ F.2d ___ [100 LRRM 2346]; Waiters Union, Local 781 v. Hotel Association (D.C. Cir. 1974) 498 F.2d 998, 1000 [86 LRRM 2001].

For the same reasons, the election to select a representative to the negotiating team[13] is not subject to the duty of fair representation. The negotiating team must represent all employees in the unit fairly, but that obligation does not entail the selection of negotiators in any particular manner.

Thus, none of charging party's allegations, taken individually, constitutes conduct which has a substantial impact on the relationships of "B" and "C" shift members to their employers. Even if these allegations are viewed as an overall course of conduct by SEIU, there is no evidence that this conduct has had any impact on SEIU's representation of "B" and "C" shift members in negotiations.

Charging party's remaining allegations refer to conduct which preceeded SEIU's certification as exclusive representative of the maintenance and operations unit at LACCD: (1) The allegation in Case No. LA-CO-32 that SEIU held a meeting on May 11, 1977, without notice to employees; (2) the allegation in Case No. LA-CO-33 that three business representatives were ratified at a meeting on April 22, 1977 with little participation by "B" and "C" shift members; and (3) the allegation in Case No. LA-CO-34 that the May 20, 1977,

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[13]Case No. LA-CO-32.

appointment of a new secretary-treasurer was made with little "B" and "C" shift participation.

The duty of fair representation in section 3544.9 applies only to exclusive representatives. Since the above actions occurred before SEIU's certification, section 3544.9 does not apply.

Section 3543.6(b)

Section 3544.9 is enforceable under section 3543.6(b) since breaches of the duty of fair representation violate that section. Section 3543.6(b) states that it shall be unlawful for an employee organization to:

> Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

The language of this section is identical to that of section 3543.5(a) which covers employer conduct, and the Board sees no reason to analyze those sections differently. Under the test articulated in Carlsbad Unified School District (1/30/79) PERB Decision No. 89, the conduct alleged to constitute an unfair practice must tend to or actually result in some harm to employee rights granted under the EERA (p. 10 and concurring opinion at p. 21). By imposing a duty of fair representation in section 3544.9, the Legislature clearly gave employees a right to be represented fairly by their exclusive

representive.[14] Conduct breaching that duty therefore harms an employee right, making violations of section 3544.9 unfair practices under section 3543.6(b).[15]

However, the conduct proscribed by section 3543.6(b) encompasses more than a breach of the duty of fair

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[14]The NLRA does not include a provision specifically imposing a duty of fair representation on exclusive representatives. However, the NLRB has found that employees' right "to bargain collectively through representatives of their own choosing" (section 7 of the NLRA) gives employees a "right to be free from unfair or irrelevant or invidious treatment by their exclusive bargaining agent in matters affecting their employment." (Miranda Fuel Co., Inc. (1962) 140 NLRB 181 at p. 185 [51 LRRM 1584], enf. den. (2d Cir. 1963) 326 F.2d 172 [54 LRRM 2715].) It enforces this right through NLRA section 8(b)(1)(A), which provides, in pertinent part:

> It shall be an unfair labor practice for a labor organization or its agents --
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> (1) to restrain or coerce (A) employees in the exercise of rights guaranteed in section 7. . . .

This enforcement was approved in principle by the United States Supreme Court in Vaca. v. Sipes, supra, 386 U.S. 171 [64 LRRM 2369].

By 1975, when the EERA was enacted, there was no dispute that under the NLRA an exclusive representative which breached its duty of fair representation committed an unfair labor practice. By including section 3544.9 in the EERA, the California Legislature ensured that the right of employees to be fairly represented would be enforceable by PERB.

[15]See Mt. Diablo Unified School District, supra, (8/21/78) PERB Decision No. 68, in which the Board found that the particular alleged breach of the duty of fair representation in the case, in which the employee organization was accused of discriminating against certain negotiating unit members because of their membership in another employee organization, could constitute a violation of section 3543.6(b).

representation, and charging party's allegations must be examined to determine whether they constitute a violation of that section separate and apart from any violation of section 3544.9. Other employee rights protected by section 3543.6(b) are set forth in sections 3540 and 3543. Section 3540 recognizes:

> the right of public school employees to join organizations of their own choice, to be represented by such organizations in their professional and employment relations with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit. . . .

Section 3543 states:

> Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. . . .

In the present case, all of charging party's allegations relate to the internal activities of SEIU. Thus, we must decide whether employees have any rights under sections 3540 and 3543 to have an employee organization structured or operated in any particular way.

The EERA gives employees the right to "join and participate in the activities of employee organizations" (sec. 3543) and employee organizations are prevented from interfering with employees because of the exercise of their rights (sec. 3543.6(b)). Read broadly, these sections could be

construed as prohibiting any employee organization conduct which would prevent or limit employee's participation in any of its activities. The internal organization structure could be scrutinized as could the conduct of elections for union officers to ensure conformance with an idealized participatory standard. However laudable such a result might be, the Board finds such intervention in union affairs to be beyond the legislative intent in enacting the EERA. There is nothing in the EERA comparable to the Labor-Management Reporting and Disclosure Act of 1959,[16] which regulates certain internal conduct of unions operating in the private sector. The EERA does not describe the internal workings or structure of employee organizations nor does it define the internal rights of organization members. We cannot believe that by the use of the phrase "participate in the activities of employee organizations . . . for the purpose of representation on all matters of employer-employee relations" in section 3543, the Legislature intended this Board to create a regulatory set of standards governing the solely internal relationship between a union and its members. Rather, we believe that the Legislature intended in the EERA to grant and protect employees' rights to

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[16]29 U.S.C. section 411 et seq.

be represented in their employment relations by freely chosen employee organizations.[17]

Thus, unless the internal activities of an employee organization have such a substantial impact on employees' relationship with their employer as to give rise to a duty of fair representation, we find that public school employees do not have any protected rights under the EERA in the organization of their exclusive representative. In brief, sections 3540 and 3543 do not give employees more rights in the internal activities of an employee organization than they have under section 3544.9.

Since we have already found that none of the conduct alleged to be unlawful by the charging party has a sufficiently substantial impact on employees' relationship with their employer as to give rise to the duty of fair representation, we dismiss Case Nos. LA-CO-27, 32, 33, and 34.

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[17]Union members may have other remedies for problems involving internal union activities. The Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. sec. 411 et seq.) applies to "mixed locals" where either the local, the national, or the international employee organization is composed of both government and non-government employees. (Kennedy v. Metropolitan Bus Authority (1979) ___ F.Supp. ___ [102 LRRM 2088].). At least some organizations representing public school employees are mixed.

There may also be remedies at common law for some internal membership questions. See, e.g., I.A.M. v. Gonzales (1958) 356 U.S. 617; James v. Marinship (1944) 25 Cal.2d 721.

Financial Reports

Charging party has charged SEIU with violating section 3543.6(b) in its handling of its monthly financial report at its monthly meetings.[18] Section 3546.5 sets forth both the statutory financial disclosure requirements and the procedure and remedy for an employee organization's failure to comply with these requirements. It states:

> 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, signed and certified as to accuracy by its president and treasurer, or corresponding principal 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.

At the time charging party filed his unfair practice charges, PERB had not yet adopted any regulations implementing

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[18]Charging party's allegations are as follows: At the July 29, 1977, meeting of SEIU, no monthly financial report was posted. A financial report was posted at the meeting of August 23, 1977, but charging party was not allowed to remove it and examine it at his seat. (LA-CO-31.) The September 23, 1977, financial report deleted the names, salaries, and mileage expenses of union officials. It stated that an audit would be conducted covering January 1, 1977 to June 30, 1977. Charging party had previously urged that an audit covering 1974-76 was necessary. (LA-CO-34.)

this section.[19] Nevertheless, the statute clearly indicates that the appropriate procedure for remedying a violation of section 3546.5 is not to file an unfair practice charge against the employee organization, but to file a petition with PERB seeking an order compelling compliance.

In addition, it should be noted that all of charging party's complaints deal with monthly financial reports, while section 3546.5 requires only an annual financial report. Therefore, even if we treated charging parties' allegations as a petition for a compliance order, we would dismiss the petition as not alleging any basis for finding that SEIU has not complied with EERA's financial disclosure requirement.

ORDER

Upon the foregoing Decision and the entire record in this case, the Public Employment Relations Board ORDERS that the unfair practice charges in Case Nos. LA-CO-27, 32, 33, and 34 are hereby dismissed.

By: Raymond J. Gonzales, Member

Harry Gluck, Chairperson

[19]On January 19, 1978, PERB filed sections 32125 and 32126 of the California Administrative Code, title 8, providing a procedure for implementing section 3546.5. These sections were renumbered to 32900 and 32910 on July 8, 1978.

PUBLIC EMPLOYMENT RELATIONS BOARD

OF THE STATE OF CALIFORNIA

In the Matter of: JULES KIMMETT, Charging Party, vs. SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 99, Respondent. In the Los Angeles Community College District.	Case Nos. LA-CO-27 LA-CO-31 LA-CO-32 LA-CO-33 LA-CO-34 RECOMMENDED DECISION January 10, 1978

Appearances: Jules Kimmett, pro per; Willie Griffin, Secretary-Treasurer, SEIU, Local 99, for Service Employees International Union, Local 99.

Before Jeff Paule, Hearing Officer.

STATEMENT OF THE CASES

On July 25, 1977, Jules Kimmett (hereinafter "Kimmett" or "charging party") filed an unfair practice charge (LA-CO-27) against Local 99 of the Service Employees International Union (hereinafter "SEIU" or "respondent") alleging a violation of Government Code Section 3543.6(b).[1] The charging party contends that the respondent is denying to the charging party his right to attend and participate in union activities (see Sections 3540 and 3543) because union meetings

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[1]All section references are to the Government Code unless otherwise specified. Section 3543.6(b) provides:

> It shall be unlawful for an employee organization to:
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> Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

are held on Friday nights at a time when Kimmett and certain other employees work.

On August 29, 1977, Kimmett filed an unfair practice charge (LA-CO-31) against the SEIU alleging a violation of Section 3543.6(b). In this charge, the charging party contends that the President of Local 99, SEIU, Joseph Bennett, threatened to impose reprisals on Kimmett because of Kimmett's exercise of rights guaranteed by the Educational Employment Relations Act (hereinafter "EERA" or "Act").

On September 6, 1977, Kimmett filed an unfair practice charge (LA-CO-32) against the SEIU alleging a violation of Section 3543.6(b). In this charge, the charging party contends that the SEIU failed to properly notify Kimmett and certain other members of a union meeting held on May 11, 1977. Further, the charging party alleges that at the meeting of May 11, 1977, the respondent did not discuss with the members the status of contract negotiations which the union was then engaged in with the Los Angeles Community College District (hereinafter "LACCD").

On September 14, 1977, Kimmett filed an unfair practice charge (LA-CE-33) against the SEIU alleging a violation of Section 3543.6(b). In this charge, the charging party contends that the SEIU has failed to fairly represent its members by not informing the charging party and other employees of the progress of negotiations.

On October 3, 1977, Kimmett filed an unfair practice charge (LA-CO-34) against the SEIU alleging a violation of Section 3543.6(b). In this charge, the charging party alleges that the respondent conducted an illegal election for secretary-treasurer of Local 99.

A hearing was held on November 21, 1977 at the Los Angeles Public Employment Relations Board Regional Office (hereinafter PERB), formerly Educational Employment Relations Board. Prior to the start of the hearing, the charging party filed four additional charges (LA-CO-36, 41, 42 and 43) which were served on the respondent. No disposition of these charges is made in this decision.

Also at the hearing, the charging party was permitted to present evidence with respect to Case No. LA-CO-31 at a later time. Therefore, no disposition is made of Case No. LA-CO-31 in this decision.

FINDINGS OF FACT

The charging party, Jules Kimmett, is a custodian for the Los Angeles Community College District and works on the "C" shift (10:30 p.m.-7:00 a.m.) at Los Angeles Valley College (hereinafter "LAVC"). Mr. Kimmett has been an employee of the LACCD and a member of Local 99 for approximately four years.

The respondent, SEIU, Local 99, is the exclusive representative of a unit of maintenance and operation employees of the LACCD. The union represents 10,500 employees of which approximately 600 are employed by the LACCD.

General membership meetings of Local 99 usually are held on the fourth Friday of each month at 8:00 p.m. This practice has been in effect for the last ten years.

CONCLUSIONS OF LAW

Case No. LA-CO-27

In this charge, the charging party contends that he has been discriminated against because his rights to participate in the activities of the respondent union have been denied by the officers of the respondent. This has occurred, argues the charging party, because the union

schedules its membership meetings at a time when the charging party is unable to attend.

Section 3543.6(b) states in relevant part that it shall be unlawful for an employee organization to discriminate or threaten to discriminate against employees or otherwise interfere with employees because of their exercise of rights guaranteed by this chapter.

In San Dieguito Faculty Association v. San Dieguito Union High School District, EERB Decision No. 22 (September 2, 1977), the PERB analyzed the "because of" language contained in Section 3543.5(a). (This section parallels Section 3543.6(b); the only difference is that this section makes it an unfair practice for an employer to engage in discriminatory conduct.)

In referring to the "because of" language contained in Section 3543.5(a), the Board stated that, "[i]nterference 'because of' is quite different from mere 'interference in'. 'Because of' connotes purposes or intentional behavior; 'interference in' connotes interference with or without an unlawful intent."

The Board's analysis of Section 3543.5(a) is applicable to Section 3543.6(b) since the two sections are nearly identical.

Based on the record herein, it is found that the respondent had no unlawful intent.

Charging party offered no evidence that the respondent intentionally scheduled union meetings at a time and place inconvenient to the charging party. Rather, the evidence indicates that the respondent has held its general membership meetings at the same time of day and month for a longer period than the charging party has been a member.

Therefore, it is difficult to sustain the charging party's allegation that the union is intentionally scheduling meetings at a time when the charging party cannot attend.

Furthermore, the evidence indicates that the respondent selected Friday nights for its meetings because it is a time most convenient for most employees. While it is true that for those employees who work late-night hours, it is difficult, if not impossible, to attend union meetings, this fact in and of itself is insufficient to sustain a Section 3543.6(b) violation.

Case No. LA-CO-27 is dismissed.

Case No. LA-CO-32

In this charge, the charging party alleges that there has been a violation of Section 3543.6(b) because the union failed to properly notify the charging party of a union meeting on May 11, 1977. A second allegation of this charge is that at the May 11, 1977 meeting, union leaders did not discuss in sufficient detail the status of contract negotiations then taking place with LACCD.

For the reasons expressed in Case No. LA-CO-27, supra, the first allegation of this charge must be dismissed.

There was no evidence presented that the respondent intentionally failed to provide the charging party with proper notice of the union meeting held on May 11, 1977. Moreover, the fact that the charging party can point to only one meeting where the union allegedly did not properly notify the charging party of a union meeting buttresses the conclusion that no unlawful intent to discriminate against the charging party exists in this case.

With respect to the second allegation, it is found that even if the facts as stated in the charge are determined to be true, (see San Juan Federation of Teachers v. San Juan Unified School District,

EERB Decision No. 12 (March 10, 1977)), the charge does not come within the jurisdiction of the PERB. There is nothing in the Act which requires a union to follow a pre-determined format for union meetings, established by the PERB, in discussing with its members the status of contract negotiations.

Case No. LA-CO-33

In this charge, the main contention is that the respondent has not sent a representative "for ten weeks" to the charging party's work location, LAVC, to inform the charging party and other "C" shift employees of the status of negotiations.[2] The charging party maintains that the respondent by not sending a representative to the charging party's work location is not "fairly representing" the "C" shift employees.

Section 3544.9 provides that:

> The employee organization recognized or certified as the exclusive representative for the purpose of meeting and negotiating shall fairly represent each and every employee in the appropriate unit.

The scope of this section has yet to be determined by the Board. It seems clear, however, that this section was not intended to require a union to report to its members at regular intervals the status of negotiations.

While it may be argued that a union better serves and "represents" its members when it reports regularly to its membership on the status of

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[2]This aspect of the charge has been amended several times. According to charging party, over "30 weeks" have now elapsed since a union representative has visited the "C" shift employees' work location.

negotiations, there is no violation of Section 3544.9 if it fails to do so.[3]

Case No. LA-CO-34

The main contention in this charge is that the respondent conducted an "illegal and fraudulent" election for secretary-treasurer of the SEIU, Local 99. The charging party contends that the election of the secretary-treasurer was illegal because it was not ratified by all members.

The election of union officers is found to be an internal affair of the union and unless an individual member is able to present evidence that the union intentionally conducted an allegedly illegal election in order to interfere with the rights of particular members, there is no basis for an unfair practice charge under the EERA. No such evidence was presented in this case.

ORDER

Upon the foregoing findings of fact, conclusions of law, and the entire record of this case, it is hereby ordered that the unfair practice charges in Case Numbers LA-CO-27, 32, 33 and 34 are dismissed.

Pursuant to Title 8, California Administrative Code, Section 35029, this recommended decision shall become final on January 23, 1978

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[3]No evidence was introduced that the respondent discussed with all other employees the status of negotiations and intentionally bypassed the charging party and other "C" shift employees at LAVC.

unless a party files a timely statement of exceptions. Any statement of exceptions must be filed with the PERB in Sacramento to the attention of the Executive Assistant to the Board and concurrently served on the respondent.

Dated: January 10, 1978.

Jeff Paule
Hearing Officer