

SUPERCEDED first by Decision 183a-H, then by Decision 420-H, and finally by the U.S. Supreme Court, 485 U.S. 589

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



WILLIAM H. WILSON,)
)
Charging Party,) Case No. SF-CE-4-H
)
v.) PERB Decision No. 183-H
)
UNIVERSITY OF CALIFORNIA AT BERKELEY,) November 25, 1981
)
Respondent.)
_____)

Appearances: Andrew Thomas Sinclair, Attorney (Sinclair & Clancy) for William H. Wilson; Susan M. Thomas, Attorney for Regents of the University of California at Berkeley.

Before Gluck, Chairperson; Jaeger and Moore, Members.

DECISION

The instant case comes before the Public Employment Relations Board (hereafter Board or PERB) on exceptions taken by the University of California at Berkeley (hereafter University) to the proposed hearing officer's decision. In that decision, the hearing officer determined that William H. Wilson, as an individual and on behalf of the American Federation of State, County and Municipal Employees, Local 371 (hereafter AFSCME), sustained its charge that the University violated subsections 3571(a) and (b) of the Higher Education Employer-Employee Relations Act (hereafter HEERA or Act) and dismissed AFSCME's allegation with regard to

subsection 3571(d).¹ AFSCME did not submit exceptions to the hearing officer's dismissal of the allegation regarding subsection 3571(d) of the Act, and we therefore make no ruling on this charge.

The Board has reviewed the record and concludes that the hearing officer's procedural history and findings of fact as set forth in the proposed decision, attached hereto, are free

¹The HEERA is codified at Government Code section 3560 et. seq. All statutory references hereafter are to the Government Code unless otherwise indicated.

Subsections 3571(a), (b) and (d) provide:

It shall be unlawful for the higher education employer to:

(a) 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.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another; provided, however, that subject to rules and regulations adopted by the board pursuant to Section 3563, an employer shall not be prohibited from permitting employees to engage in meeting and conferring or consulting during working hours without loss of pay or benefits.

from prejudicial error and are adopted by the Board itself.² Further, we affirm the hearing officer's conclusions of law as modified below.

DISCUSSION

In accordance with the hearing officer's determination, we find that section 3568 of HEERA³ entitles AFSCME to use of the University's internal mail system. The University may not insist that organizational material be stamped and sent through the United States Postal Service. We note that the University has expressed concern regarding the fact that, as currently maintained, the internal mail system utilizes supervisors to distribute mail. An employer has the right to protect itself against potential charges that its supervisory personnel are engaged in organizational activities or rendering assistance to an employee organization. Further, an employer may, as a

²In its exceptions, the University correctly identifies certain inaccuracies in the hearing officer's recitation of the facts. We find, however, that the factual summary is free from prejudicial error.

³Section 3568 provides:

Subject to reasonable regulations, employee organizations shall have the right of access at reasonable times to areas in which employees work, the right to use institutional bulletin boards, mailboxes and other means of communication, and the right to use institutional facilities at reasonable times for the purpose of meetings concerned with the exercise of the rights guaranteed by this act.

matter of policy, require its supervisory employees to maintain its neutrality with respect to organizational activity. (State of California (Department of Forestry) (9/21/81) PERB Decision No. 174-S.) We conclude that an employer is permitted to structure its internal mail system in order to avoid conduct which may be prohibited by the Act. Thus, while we do not depart from our ruling that AFSCME is entitled to utilize the University's internal mail system, the University may devise, consistent with its statutory obligations, an alternative method of mail distribution which will not require supervisory employees to deliver the organizational materials.

ORDER

Based upon the foregoing facts, conclusions of law and the entire record in this case, it is found that the University of California at Berkeley has violated subsections 3571(a) and (b) of the Higher Education Employer-Employee Relations Act by denying the American Federation of State, County and Municipal Employees, Local 371, access to the University's internal mail system at the Berkeley campus. It is hereby ORDERED that the University and its representatives shall:

(1) CEASE AND DESIST FROM:

(a) Denying employee organizations access to its internal mail system for the purpose of communicating with employees;

(b) Interfering with employees' rights to participate in employee organization affairs by receiving communications from such organizations.

(2) TAKE THE FOLLOWING AFFIRMATIVE ACTION WHICH IS NECESSARY TO EFFECTUATE THE POLICIES OF THE ACT:

(a) Within five (5) workdays of date of service of this decision, post copies of the Notice, as set forth and attached hereto in the Appendix, at its headquarters office and in all locations on the Berkeley campus where notices to employees are customarily placed. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps should be taken to insure that said Notices are not reduced in size, altered, defaced or covered by any other materials; and

(b) At the end of thirty-five (35) workdays from date of service of this Decision, notify the San Francisco regional director of the Public Employment Relations Board in writing of the action the University has taken to comply with this Order.

It is further ordered that the alleged violation of subsection 3571(d) of the Act is DISMISSED.

By: Barbara D. Moore, Member

John W. Jaeger, Member

Harry Gluck, Chairperson

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California

After a hearing in Unfair Practice Case No. SF-CE-4-H in which both parties participated, it has been found that the University of California at Berkeley violated subsections 3571(a) and (b) of the Higher Education Employer-Employee Relations Act by unreasonably denying the American Federation of State, County and Municipal Employee, Local 371, use of the University's internal mail system for the purpose of communicating with employees on the Berkeley campus. As a result of this conduct, we have been ordered to post this Notice by the Public Employment Relations Board. We will:

CEASE AND DESIST FROM:

1. Denying employee organizations access to the University internal mail system for the purpose of communicating with employees on the Berkeley campus, and
2. Interfering with employees' rights to participate in employee organization affairs by receiving communications from such organizations.

Dated: _____ UNIVERSITY OF CALIFORNIA AT BERKELEY

By: _____
Authorized Agent of the University

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR 30 CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED BY ANY MATERIAL.