

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION,)
Charging Party,) Case No. SF-CE-516
v.) PERB Decision No. 293
REDWOODS COMMUNITY COLLEGE DISTRICT,)
Respondent.)
March 15, 1983

Appearances; Christian M. Keiner, Attorney (Biddle, Walters & Bukey) for Redwoods Community College District; E. Luis Saenz, Attorney for California School Employees Association.

Before Gluck, Chairperson; Jaeger and Burt, Members.

DECISION

GLUCK, Chairperson: The Redwoods Community College District (District) excepts to a finding that it violated the Educational Employment Relations Act (EERA) sections 3543.5(a) and (b)¹ by refusing to allow its employee,

¹The EERA is codified at Government Code section 3540 et seq. All references hereafter will be to the Government Code unless otherwise indicated. Sections 3543.5(a) and (b) state:

It shall be unlawful for a public school 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

Doris Hughey, to have "meaningful" union representation during a performance review meeting.

FACTS

In August 1980, Doris Hughey was evaluated by her immediate supervisor, Howard Wycoff. This evaluation was lower than it had been in previous years. Thirty-three items were marked "fair" and twenty-six were marked "good." The overall rating was "needs improvement" and included the comment that Hughey needed to "change her attitude."

In response, Hughey wrote a memo to Gil Saunders, Vice President for Business Affairs, requesting that the evaluation be reviewed by an impartial person in the presence of a California School Employee Association (CSEA) representative. Before Saunders received this request, he reviewed the evaluation and met with Hughey, suggesting to her that she meet with Wycoff to work out their differences. When Saunders did receive Hughey's request for an impartial reviewer, he appointed Thomas Hanna, Dean of Administrative Services, to conduct the review.

In the meantime, on August 29, Hughey met with Wycoff and CSEA representatives, pursuant to which Wycoff agreed to write a new evaluation. Saunders and Hanna were informed of this

rights guaranteed by this chapter.

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

development, and that Hughey considered the problem at least temporarily resolved.

Nevertheless, Hanna insisted on continuing with an independent review, feeling he had been appointed to resolve what he considered a challenge to the evaluation process itself. Hanna scheduled a meeting with Hughey for October 30. Hughey requested that her shop steward be present, to which Hanna consented, explaining, however, that there was no right to representation under these circumstances.

Hanna began the meeting by explaining that its purpose was purely a factfinding mission to allow Hughey to state her concerns about the evaluation, and that no discipline was contemplated. According to Hughey, Hanna informed Bill Rumley, the CSEA representative, that he was to refrain from entering into the conversation.² He then engaged Hughey in an item-by-item discussion of the evaluation.

When the subject of Hughey's cooperation arose, Rumley interjected a comment about Wycoff as a supervisor, to the effect, "you know how Howard is" Before he could finish his thought, Hanna cut him off, stating that such comments were inappropriate, that Rumley should restrain himself, and that if he had problems with Wycoff, he should

²Two other witnesses testified that Hanna told Rumley to "refrain from making comments" and that the meeting was not a hearing but was for informational purposes.

discuss them with the supervisor in person. According to Rumley's uncontroverted testimony, Hanna added that Rumley should not have a part in this meeting. Neither Rumley or Hughey protested this silencing and the meeting proceeded without further incident.

After the meeting, Hanna prepared a report which he placed in Hughey's personnel file. While the report did not lead to any discipline, it included some negative statements about Hughey's behavior.³

CSEA filed the instant charge alleging that Hughey had been denied both her right to be represented by the organization of her own choosing and that CSEA had been denied its right to represent. The administrative law judge ruled that NLRB v. Weingarten (1975) 420 U.S.25 [88 LRRM 2689], strictly applied, would not afford Hughey the right to representation in this situation because she could not reasonably expect discipline to result from the interview;⁴ however, under EERA's more

³For example, Hanna wrote:

It would appear that Mrs. Hughey had the opinion that her authority exceeded that of her supervisor. . . . Mrs. Hughey's comments to others about her supervisor should not have been made and no excuse can be made to justify the occurrence.

⁴Weingarten and its progeny hold that employee insistence on union representation at an investigatory interview which the employee reasonably believes will lead to discipline is protected concerted activity.

expansive representational rights for both employees and their organizations, Hughey was entitled to representation under the circumstances.

The District argues on exception that Weingarten, with its limitations, should be applied to all public employees inasmuch as California courts have already so limited representational rights under the Meyers-Milias-Brown⁵ and Brown Acts.⁶ Even if Hughey were entitled to a representative for this meeting, the District claims, there was no violation because the steward's comment was an inappropriate personal remark which is unprotected.

DISCUSSION

The U.S. Supreme Court based its decision in Weingarten,⁷ supra, on section 7 of the National Labor Relations Act, which ensures employees the right:

⁵Government Code section 3515, et seq., applicable to county, city and special district employees.

⁶Government Code section 3500 et seq., predecessor to Meyers-Milias-Brown and still applicable to certain employees excluded from coverage of other acts.

⁷The Weingarten doctrine has not been expanded by the NLRB or the federal courts. For example, the NLRB has found there is no right to representation at counseling sessions on excessive absenteeism where the employer gave assurances that no discipline would result. Amoco Chemicals Corp. (1978) 237 NLRB 394. Nor is representation required at an interview whose purpose is merely to inform an employee of the decision to impose discipline. NLRB v. Certified Grocers of California (9th Cir. 1978) 100 LRRM 3029; Baton Rouge Water Works Co. (1979) 246 NLRB 995.

to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . .

EERA's language is not identical. It provides in section 3543:

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. (Emphasis added.)

Likewise section 3543.1(a) gives the employee organizations "the right to represent their members in their employment relations with public school employers" (Emphasis added.)

The very purpose of the Act, articulated in section 3540 is to:

. . . promote the improvement of personnel management and employer-employee relations within the public school systems . . . by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by such organizations in their professional and employment relationships with public school employers, . . . (Emphasis added.)

This language provides an ample basis for departing from the strictures of Weingarten. Evaluations are of crucial importance to employees whose promotions, pay raises, transfers, and professional reputations may be affected.⁸ An

⁸The employer as well certainly has a strong interest in assuring that evaluations are accurate.

evaluation meeting such as that conducted by Hanna is clearly encompassed by the term, "professional and employment relationships with public school employers," in which employees have a right to be represented by their selected organizations.

Barring a union representative from a meeting at which the evaluation is being "appealed," as was the intent of the meeting here, is a denial of rights granted in section 3543.1(a).

A representative's presence at a meeting over a disputed evaluation could assist the employee in presenting clear, cogent arguments and facts supporting his/her point of view. The representative may also act as a buffer in a confrontation that is filled with potential acrimony, a function obviously beneficial to both sides. Also, the potential power imbalance between management, unfettered in the number of representatives it may have, and the lone employee calls for a representative's presence.

We have recently decided that sections 3543 and 3543.1(a) guarantee a grievant's right to have union representation during the initial informal step of an in-house grievance procedure, Rio Hondo Community College District (12/28/82) PERB Decision No. 272.

The interview here was very similar to the Rio Hondo meeting. Both meetings were held to resolve a potential employee complaint before a grievance stage. Both were

attended by management officials above the affected employees' immediate supervisor.

However, not all encounters between management and the employee require representation. The employer need not allow it for such routine conversations as giving instructions, training or correcting work techniques. In such a case, the employer's interest in conducting its mission free from delay and unnecessary formality outweighs the employee's interest in being represented.

Nor is an employee necessarily entitled to representation at a meeting between the employee and the evaluator in the first instance. However, the evaluation interview in this instance was more than such a meeting. It resulted from Hughey protesting her evaluation to a level of management above her immediate supervisor. It was initiated by a high-level management official and imbued with sufficient formality and "appellate" character to take on the quality of a grievance, a proceeding for which the right of representation is undisputed.

The District cites Civil Service Association v. City and County of San Francisco (1978) 22 Cal.3d 552; Robinson v. State Personnel Board (1979) 97 Cal.App.3d 994; and Marin Community College District (11/19/80) PERB Decision No. 145 as authority for applying Weingarten strictly.

None of these cases is persuasive. Weingarten was intended only to clarify one uncertain aspect of the right of

representation which has been established under the language of section 7 of the National Labor Relations Act, namely, the extent of that right during a preliminary investigative procedure conducted by the employer. Certainly, that case need not be relied upon to establish the right of representation in grievance processing or arbitration of disciplinary action. Further, none of the court cases cited by the District arose under EERA and the specific provisions of sections 3540 and 3543, supra.⁹

In sum, we find that under the instant circumstances, Hughey had a right to be represented and that CSEA enjoyed a concomitant right to represent her at the interview. The District denied those rights by preventing Rumley from speaking during the meeting. The evidence shows that Hanna intended that Rumley not speak at all, regardless of the content of his remarks. Hughey's uncontradicted account of Hanna's pre-meeting comments indicates that Hanna told Rumley to refrain from entering into the conversation which was to be between "Doris and me." This, coupled with Hanna's interruption of Rumley's comment during the meeting, is a clear denial of meaningful representation. The District has therefore violated sections 3543.5(a) and (b).

⁹We note additionally that each of the cases cited involved actual or potential disciplinary action; none expressly limited the right of representation only to such circumstances.

REMEDY

In addition to a cease-and-desist order, it is appropriate in this case to require the District to purge any product of this meeting from Doris Hughey's personnel files. Specifically, Hanna's report should be removed. Further, upon request, Hughey should be granted a new opportunity to appeal her evaluation and to be represented therein by a representative of her choosing.

The District shall also be ordered to post a copy of the attached Notice to Employees at all places where notices are customarily posted.

ORDER

Upon the foregoing facts, conclusions of law, and the entire record in this case, it is hereby ORDERED that the Redwoods Community College District shall:

A. CEASE AND DESIST FROM:

1. Denying its employee, Doris Hughey, her right to be represented by an organization of her own choosing at a meeting held pursuant to her appeal of an evaluation.

2. Denying the employee organization the right to represent its members by preventing the CSEA job steward from speaking at a meeting held pursuant to an employee's appeal of an evaluation.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

1. Remove from Doris Hughey's personnel files all

management reports which resulted from the October 30, 1980 meeting with Thomas Hanna.

2. Grant to Doris Hughey, if so requested, the opportunity to protest her August 1980 evaluation to higher level of management and to be represented by a representative of her choosing.

3. Within seven (7) workdays following the date of service of this Decision, post at all work locations where notices to employees are customarily placed, copies of the Notice attached as an appendix signed by an authorized agent of the District. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to insure that such Notices are not reduced in size, defaced, altered, or covered by any material.

4. Notify the San Francisco regional director of the Public Employment Relations Board in writing within forty-five (45) workdays following the service of this Decision of the steps the District has taken to comply with this Order.

Members Jaeger and Burt joined in this Decision.

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-516, California School Employees Association v. Redwoods Community College District, in which all parties had a right to participate, it has been found that the Redwoods Community College District:

Unlawfully denied its employee Doris Hughey her right to be represented by the California School Employees Association at a meeting held to consider her protest of a performance evaluation and denied the California School Employees Association the right to represent Doris Hughey through its job steward at that meeting.

The Redwoods Community College District agrees to remove from Doris Highey's personnel files all management reports which resulted from her meeting with Thomas Hanna on October 30, 1980, concerning her performance evaluation; and if requested, will grant to Doris Hughey the opportunity to protest her August 1980 evaluation to a higher level of management and to be represented at such time by a representative of her choosing.

Copies of this Notice are to be posted at all work locations where notices to employees are customarily placed and will remain there for thirty (30) consecutive workdays.

REDWOODS COMMUNITY COLLEGE DISTRICT

Dated: _____ By: _____
Authorized Agent of the District

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