

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



DAVID KELLER GRAHAM,)	
)	
Charging Party,)	Case No. S-CO-28-S
)	
v.)	PERB Decision No. 434-S
)	
CALIFORNIA STATE EMPLOYEES')	November 19, 1984
ASSOCIATION,)	
)	
Respondent.)	

Appearance: David Keller Graham, on his own behalf.
Before Jaeger, Morgenstern and Burt, Members.

DECISION

MORGENSTERN, Member: David Keller Graham (Charging Party) appeals the dismissal of his charge alleging that the California State Employees' Association (CSEA) violated section 3519.5(b) of the State Employer-Employee Relations Act (SEERA or Act)¹ by denying his request to make a charitable contribution in

¹SEERA is codified at Government Code section 3512 et seq. All statutory references herein are to the Government Code unless otherwise indicated.

Section 3519.5 provides, in pertinent part:

It shall be unlawful for an employee organization to:

.....

(b) 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.

lieu of payment of a fair share fee, pursuant to section 3515.7(c).²

For the reasons discussed below, the Public Employment Relations Board (PERB or Board) affirms the dismissal of the charge.

FACTS AND PROCEDURAL SUMMARY

On September 27, 1983, Charging Party filed an unfair practice charge in which he alleged, in essence, that he qualified for a religious exemption from the payment of fair share fees on the basis of his "individual conscience," notwithstanding his assertions that he was unable "to name a religious organization to which [he] belongs" or to "affirm its teachings against joining or supporting the activities of a union."

The charge states, in pertinent part, as follows:

My conscience is based on an authority far higher than that of any religious group or

²Section 3515.7(c) provides:

Notwithstanding subdivision (b), any employee who is a member of a religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations shall not be required to financially support the recognized employee organization. That employee, in lieu of a membership fee or a fair share fee deduction, shall instruct the employer to deduct and pay sums equal to the fair share fee to a nonreligious, nonlabor organization, charitable fund approved by the State Board of Control for receipt of charitable contributions by payroll deductions.

its hierarchy [sic]--higher even than that of the church itself. It is based on nothing less than God's own Word, which teaches separation of walk from the world (2 Corinthians 6:14-18), as well as subjection to the government (Romans 13:1-2) and to employers (1 Peter 2:18). Of course, none of these principles are compatible [sic] with union principles. Again, on the authority of God's Word, the group of Christians, with which I am associated, does not have a name--does not acknowledge any name other than that of Christ Himself (Matthew 18:20). So, my conscience on this matter is very real, indeed, and rests on the highest authority possible, but has no protection under this law, whose very purpose is to protect it.

On October 13, 1983, a PERB agent dismissed the charge. The PERB agent determined that, on its face, section 3515.7(c) establishes two requirements for a religious exemption to the payment of a fair share fee: (1) the employee must be a member of a religious body; and (2) the traditional tenets or teachings of the religious body must include objections to joining or financially supporting employee organizations. Because "Charging Party concedes that he does not meet the statutory requirements," she found no prima facie violation of the Act.

On October 24, 1983, Graham appealed PERB's dismissal, affirming the sincerity of his individual conscience and arguing solely that the legislative intent and the "spirit" of section 3515.7(c) is to protect individuals who are not members of religious bodies but object, on their own conscience, to joining or financially supporting employee organizations.

DISCUSSION

The Board has not previously had occasion to consider the religious exemption to the payment of fair share fees contained in section 3515.7(c) of SEERA or the identical language of section 3546.3 of the Educational Employment Relations Act (EERA, Government Code section 3540 et seq.).³

In so doing here, we find, as did the PERB agent, that the language of section 3515.7(c) is clear and unambiguous on its

³Compare section 19 of the National Labor Relations Act (NLRA). Originally enacted in 1974 to apply only to employees of nonprofit health care institutions, the section was amended in 1980 to apply to all employees covered by the NLRA. Section 19 provides in pertinent part:

Any employee who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting labor organizations shall not be required to join or financially support any labor organization as a condition of employment; except that such employee may be required in a contract between such employee's employer and a labor organization in lieu of periodic dues and initiation fees, to pay sums equal to such dues and initiation fees to a nonreligious, nonlabor organization charitable fund exempt from taxation under section 501(c) (3) of title 26 of the Internal Revenue Code, chosen by such employee from a list of at least three such funds, designated in such contract or if the contract fails to designate such funds, then to any such fund chosen by the employee. If such employee who holds conscientious objections pursuant to this section requests the labor organization to use the grievance-arbitration procedure on the employee's behalf, the labor organization is authorized to charge the employee for the reasonable cost of using such procedure.

face, and that Charging Party's allegations fail to satisfy the requirements of that subsection.

Moreover, contrary to Charging Party's contention, we find the legislative intent clear from the face of the Act. Therefore, under established rules of statutory construction, we need not turn to extrinsic evidence to assist in its interpretation. People v. Stanley (1924) 193 Cal. 428, 431; People v. Knowles (1950) 35 C.2d 175, 182-183.

Thus, the Legislature clearly intended to limit the exemption from payment of the fair share fee to

any employee who is a member of a religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations.

This language, carefully crafted by the Legislature, simply does not permit the interpretation sought by Charging Party, that is, an exemption for any individual who conscientiously objects to the support of employee organizations, regardless of whether the objection is founded on personal religious, economic, political, ideological or other grounds. Indeed, such interpretation would render the fair share fee provision a nullity and would defeat its purpose of stabilizing employer-employee relations by compelling financial support for the representational activities of an employee organization by all who benefit from them. King City Joint Union High School District (3/3/82) PERB Decision No. 197, rev. pending 1 Civ. A016723; Ellis v. Brotherhood of Railway, Airline and Steamship

Workers (1984) _____ U.S. _____ [80 L.Ed.2d 428]; Abood v. Detroit Board of Education (1977) 431 U.S. 209 [95 LRRM 2411].

Here, Charging Party claims that he is "associated" with a "group of Christians." Even assuming that his "group" is a "religious body" under the law and that his association with it constitutes membership, Charging Party failed to allege that this religious body is one "whose traditional tenets or teachings include objections to joining or financially supporting employee organizations." Although he asserts that his personal conscience, based on his interpretation of certain passages of the Bible, is inconsistent with union principles, he does not allege that his conscience, or his interpretation of the Bible, is derived from the traditional tenets or teachings of the religious body of which he is a member.

Because Charging Party has failed to allege facts sufficient to show that he had a statutory right to be exempted from the payment of the fair share fee, CSEA's refusal to grant such exemption does not constitute a prima facie violation of the Act.

ORDER

The charge filed by David Keller Graham in Case No. S-CO-28-S is hereby DISMISSED.

Member Burt joined in this Decision. Member Jaeger's concurrence is on page 7.

Jaeger, concurring: The sincerity of Mr. Graham's objection is not in dispute. The sole question before the Board is whether he has alleged facts which, if true, support his claim that he is covered by the exemption provision of section 3515.7(c).

In his appeal, he continues to base his claim on his "individual conscience" which he argues "rests on the highest authority possible but has no protection under this law."

The language of section 3515.7(c) leaves no doubt that the Legislature intended to limit the exemption to members of religious bodies whose tenets or teachings oppose the financial support of labor organizations. Graham does not claim that Christianity, per se, is such a religious body. Nor does he identify a religious body to which he belongs whose tenets or teachings include such opposition.

In essence, Mr. Graham asserts that the Act is inadequate and demands that this Board rewrite it to afford the exemption to those employees whose opposition to the financial support of labor organizations is based on personal religious convictions.

I concur in the dismissal of this charge.