

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CRAIG RICHTER ET AL.)
)
Charging Parties,) Case No. LA-CE-1967
)
v.) PERB Decision No. 437
)
CAPISTRANO UNIFIED SCHOOL DISTRICT,) November 21, 1984
)
Respondent.)
_____)

Appearance: David T. Bryant, Attorney for Craig Richter et al.
Before Hesse, Chairperson; Jaeger and Morgenstern, Members.*

DECISION

This case is before the Public Employment Relations Board on an appeal by the Craig Richter et al. of the Board agent's dismissal, attached hereto, of their charge alleging that the Capistrano Unified School District violated section 3543.5(a)(1) of the Educational Employment Relations Act (Government Code section 3540 et seq.).

We have reviewed the dismissal and, finding it free from prejudicial error, adopt it as the Decision of the Board itself.

ORDER

The unfair practice charge in Case No. LA-CE-1967 is
DISMISSED WITHOUT LEAVE TO AMEND.

By the Board

*Members Tovar and Burt did not participate in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Headquarters Office
1031 18th Street
Sacramento, California 95814
(916) 322-3088



August 23, 1984

David T. Bryant, Esq.
National Right to Work
Legal Defense Foundation
8001 Braddock Road, Suite 600
Springfield, VA 22160

Jerome Thornsley, Superintendent
Linda A. Kroner, Director of Employee Relations
Capistrano Unified School District
32972 Calle Perfecto
San Juan Capistrano, CA 92675

Re: REFUSAL TO ISSUE COMPLAINT AND DISMISSAL OF UNFAIR PRACTICE
CHARGE; Richter, et al. v. Capistrano USD, LA-CE-1967

Dear Parties:

Pursuant to Public Employment Relations Board (PERB) Regulation section 32620(5), a complaint will not be issued in the above-referenced case and the pending charge is hereby dismissed because it fails to allege facts sufficient to state a prima facie violation of the Educational Employment Relations Act (EERA).^{1/}

The charge alleges that the District violated the EERA by entering into a collective bargaining agreement with the Association which provided for automatic deduction of agency fees. The agency fee clause in question calls for collection of nonmember service fees in an amount not exceeding the amount of initiation fee, dues and general assessment.^{2/} These fees, it is alleged, are passed on by the employer to the Association, which allegedly spends them for purposes to which the charging parties object.

^{1/}References to the EERA are to Government Code sections 3540 et seq. All section references are to the EERA unless otherwise indicated. PERB Regulations ("Board Rules") are codified at California Administrative Code, Title 8.

^{2/}A copy of the parties' organizational security provision is attached as ATTACHMENT 1.

David Bryant
Jerome Thornsley
August 20, 1984
Page 2

Discussion

Any argument that the District conduct described above violated the Act must be rejected for the following reasons:

1. The validity of compulsory payments to labor organization has long been established. (Railway Employees Department v. Hanson (1956) 351 U.S. 225 [38 LRRM 2099]; International Association of Machinists v. Street (1960) 367 U.S. 740 [48 LRRM 2345]; Abood v. Detroit Board of Education (1977) 431 U.S. 209 [95 LRRM 2411]; Ellis, et al. v. Brotherhood of Railway, Airline and Steamship Clerks (4/25/84) _____ U.S. [80 L.Ed.2d 428, 52 U.S.L.W. 4499].) Consistent with this principle, the EERA specifically permits collective bargaining agreements to include agency fee provisions requiring employees either to join the exclusive representative, or pay a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments (sections 3546 and 3540.1(2)).

2. Employee organizations may violate the EERA when they spend objecting nonmembers' agency fees on activities which are unrelated to the exclusive representative's representational role. (King City Union High School District (3/3/82) PERB Decision No. 197; Abood, supra.) The employer, however, cannot be held responsible for the expenditures of the exclusive representative. Rather, agency fees, like membership dues, are a matter of internal organizational policy and concern:

The employer's interest in the subject is limited to its willingness to impose on its non-union employees an agency fee requirement and, if so, whether an authorization election [Gov. Code section 3546] is desired. (Fresno Unified School District (4/30/82) PERB Decision No. 203, at p. 21.)

Indeed, the Board has held an employer's insistence on a "cap" on agency fees constitutes an unlawful bargaining proposal. (Fresno, supra, at pp. 21-22.)

David Bryant
Jerome Thornsley
August 20, 1984
Page 3

3. The Charging Party finds particular fault in the employer's implementation of automatic deduction of agency fees. Payroll deductions of agency fees, however, may be lawfully made without the permission of employees who are obligated under a collective bargaining agreement to pay such fees. The Board has observed that under the EERA,

Prior approval of the payor [for an agency fee deduction] is not only unnecessary but inconsistent with the involuntary nature of such fees. Withholding approval would enable the nonmember to circumvent the legislative purpose and negotiated agreement. To provide involuntary payors with this option would inevitably lead to unduly burdensome collection problems and ultimately to the wholesale enforcement of the employment termination provisions of section 3540.1(i), a consequence that would be detrimental to the educational system and to peaceful labor relations in the districts. (King City, supra, p. 25.)

Furthermore, the Education Code expressly provides that school district governing boards "shall, with or without charge, reduce the order for the payment of service fees to the certified or recognized organization as required by an organizational security arrangement between the exclusive representative and a public school employer" (Education Code section 45061.) Accordingly, the automatic deduction clause in the parties' agreement does not contribute toward an unfair practice.

For the foregoing reasons, no complaint will issue and the charge is hereby DISMISSED.^{3/}

Pursuant to Board Rule 32635 (California Administrative Code, Title 8, part III), you may appeal the refusal to issue a complaint (dismissal) to the Board itself.

^{3/}The Charging Party appears to argue that the District is a necessary party to the formulation of a meaningful remedial order against the Association. Even if this is true, however, it does not mean that the District has committed an unfair practice. Further, adequate procedural mechanisms are available to protect the charging party's interest. See, e.g., Board Rule 32164(d)(1).

David Bryant
Jerome Thornsley
August 20, 1984
Page 4

Right to Appeal

You may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal (Board Rule 32635(a)). To be timely filed, the original and five (5) copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) on Wednesday, September 12 or sent by telegraph or certified United States mail postmarked not later than Wednesday, September 12 (Board Rule 32135). The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five (5) copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal (Board Rule 32635(b)).

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany the document filed with the Board itself (see Board Rule 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.

Extension of Time

A request for an extension of time in which to file a document 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 (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party (Board Rule 32132).

Final Date

If no appeal is filed within the specified time limits, the

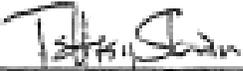
David Bryant
Jerome Thornsley
August 20, 1934
Page 5

dismissal will become final when the time limits have expired.

Very truly yours,

DENNIS M. SULLIVAN
General Counsel

By



JEFFREY SLOAN
Assistant General Counsel

Sac 8406b

ARTICLE 4 - Organizational Security

- 4.1 The District and the Association recognize the rights of unit members to freely form, join, and participate in activities of the employee organization.
- 4.2 The District shall deduct dues from the wages of all unit members who are members of the Association as of the effective date of this Article, or who may subsequently sign and deliver to the District an authorization form authorizing the deduction of unified membership dues of the organization.
- 4.3 Pursuant to the signed authorization card, as specified in 4.2, the District shall deduct one tenth of the unified dues from the regular salary check of the unit member each month for ten (10) months. Deductions for unit members who sign such authorization after the commencement of the school year shall be at the customary tenths rate for the balance of the school year.
- 4.4 Unit members who are not members of the Association on the effective date of this Article, and those who hereafter become members of the unit shall, within thirty (30) days of the effective date of this agreement or within thirty (30) days from the date they commence their assigned duties, either become members of the Association or pay to the Association a service fee in an amount equal to unified membership dues, initiation fees and general assessments. Payment of such fees shall be made either by monthly payroll deductions, as specified in 4.3, or by cash payment directly to the Association in one lump-sum within thirty (30) days of the effective date of this agreement or October 1, whichever is later. In the event that a unit member shall not pay such fee directly to the Association, the Association shall notify the District of said failure to pay and the District shall begin automatic payroll deduction as provided for in section 45061 of the California Education Code. There shall be no charge to the Association for mandatory service fee deduction.
- 4.5 The District shall not make service fee deductions from unit members who are in unpaid status but shall deduct a pro-rata share of the service fee for part-time unit members who have not become members of the Association.
- 4.6 Unit members who are members of a religious body whose traditional tenets or teachings include objections to the joining or financially supporting employee organizations shall not be required to join or financially support the Association; except that such unit members shall have deducted in lieu of the service fee a sum equal to such service fee to one of the following non-religious, non-labor organization, charitable funds exempt from taxation under the Internal Revenue Code:

United Way
American Cancer Society
American Heart Association
Boy and Girl Scouts of America

- 4.6.1 A written statement of objection along with evidence of membership in a religious body whose traditional tenets or teachings object to the joining or financially supporting employee organizations shall be made on an annual basis to the Association and the District as a condition of continued exemption from the payment of a service fee. Election of one of the groups specified in 4.6 may be changed only once per school year.
- 4.7 Nothing in this agreement shall be construed as to prohibit any employee from making direct payments to the Association upon written notice to the District and the Association.
- 4.8 The District agrees to remit all dues or service fees to the Association along with an alphabetical list of unit members for whom such deductions have been made, annotating as to member or non-member of the Association.
- 4.9 The Association agrees to furnish any information needed by the District to fulfill the provisions of this Article.
- 4.10 The Association agrees to indemnify and hold the District harmless regarding any legal claim arising out of this agency fee provisions subject to the following:
 - 4.10.1 The Association agrees to pay to the District all legal cost incurred in defending against any court action and/or administrative action before PERB challenging the legality or constitutionality of the Organizational Security provisions of this Agreement or their implementation.
 - 4.10.2 The Association shall have the exclusive right to decide and determine whether any such action or proceeding referred to in 4.10.1 of this Article shall or shall not be compromised, resisted, defended, or appealed.

