

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



FRANCES CHAPMAN, ET AL.,)
)
 Charging Parties,) Case No. SF-CE-933
)
 v.) PERB Decision No. 462
)
 MILPITAS UNIFIED SCHOOL DISTRICT,) December 13, 1984
)
 Respondent.)
 _____)

Appearances: David T. Bryant, Attorney for Frances Chapman, et al.; Littler, Mendelson, Fastiff & Tichy by Richard J. Loftus, Jr. and Janice M. Jablonski for the Milpitas Unified School District.

Before Hesse, Chairperson; Jaeger and Morgenstern, Members*

DECISION

This case is before the Public Employment Relations Board on exceptions filed by the Charging Parties to the Board agent's dismissal, attached hereto, of their unfair practice charge alleging that the Milpitas Unified School District violated section 3543.5(a) of the Educational Employment Relations Act (Government Code section 3540 et seq.).

We have reviewed the Board agent's 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. SF-CE-933 is
DISMISSED WITHOUT LEAVE TO AMEND.

By the BOARD

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



PUBLIC EMPLOYMENT RELATIONS BOARD

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



September 18, 1984

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

Richard Loftus, Esq.
Littler, Mendelson, Fastiff & Tichy
111 Almaden Blvd., Suite 400
San Jose, CA 95113-2093

Re: REFUSAL TO ISSUE COMPLAINT AND DISMISSAL OF UNFAIR PRACTICE
CHARGE; Chapman et al. v. Milpitas USD, SF-CE-933

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

^{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/}The organizational security provision in the parties' collective bargaining agreement states, in relevant part:

20.4 Each unit member covered by this agreement who is a member of the Association at the time this agreement

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.

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

is executed shall maintain his/her membership in the Association for the term of this agreement.

- 20.4.1 Bargaining unit members shall, within thirty (30) days of the effective date of this agreement or within thirty (30) days of their employment date, whichever is later, either join the Association by executing a payroll deduction authorization form for payment of dues or pay a service fee equal to dues, initiation fees and general assessment (hereinafter "service fees"), by executing a service fee deduction authorization form for the payment of such fee.
- 20.4.1.1 Nothing contained herein shall prohibit a unit member from paying dues or service fees directly to the Association.
- 20.4.1.2 If a unit member withdraws a dues or service fee authorization and/or fails to pay dues/service fees directly to the Association, the District shall, upon notification from the Association and notice to the unit member, deduct from the wages of said unit member, and pay to the Association, all dues/service fees owed to the Association as provided in accordance with Education Code Section 45061.

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. 208, 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.)

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.

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 Tuesday,

^{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
Richard Loftus
September 18, 1984
Page 5

October 9, 1984, or sent by telegraph or certified United States mail postmarked not later than October 9, 1984, (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).

David Bryant
Richard Loftus
September 18, 1984
Page 6

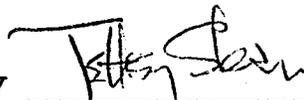
Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Very truly yours,

DENNIS M. SULLIVAN
General Counsel

By



JEFFREY SLOAN
Assistant General Counsel

8764b