STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA STATE EMPLOYEES ASSOCIATION, Charging Party,	)	Case No. S-CE-306-S
v.	)	PERB Decision No. 636-S
CALIFORNIA COMMUNITY COLLEGES, Respondent.	)	October 6, 1987

Appearances; Mary Williams-Edwards, Labor Relations Representative, for California State Employees Association.

Before Hesse, Chairperson; Porter and Craib, Members.

DECISION

This case is before the Public Employment Relations Board (Board) on appeal by charging party of the Board agent's dismissal, attached hereto, of its charge alleging that the California Community Colleges, Office of the Chancellor, violated section 3519(c)[1] of the Ralph C. Dills Act (Act).[2]

We have reviewed the dismissal and, finding it free from prejudicial error, adopt it as the Decision of the Board itself, insofar as the Board agent concludes that the

[1]Although charging party alleged a violation of section 3519(b) of the Act, it is apparent from the facts that this charge essentially alleges a violation of section 3519(c).

[2]The Act, formerly known as the State Employer-Employee Relations Act, is codified at Government Code section 3512 et seq.

allegations in the instant charge fail to state a prima facie violation of the Act.

By the Board.[3]

[3]Members Shank and Cordoba did not participate in this Decision.

STATE OF CALIFORNIA GEORGE DEUKMEJIAN, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Headquarters Office
1031 18th Street
Sacramento, CA 95814-4174
(916) 323-8015

April 28, 1987

Ms. Mary L. Williams-Edwards
Labor Relations Representative
Mr. Darrell Steinberg
Attorney
California State Employees Association
1108 O Street
Sacramento, CA 95814

Re: CSEA v. State of California (Calif. Community Colleges), Case No. S-CE-306-S, Dismissal of Charge

Dear Ms. Williams-Edwards and Mr. Steinberg:

You have filed a charge alleging that Respondent State of California, California Community Colleges (CCC) violated the State Employer-Employee Relations Act (SEERA) when it, "continuously implemented a policy of making out-of-class assignments between bargaining units when assigning employees to assist in evaluation community colleges." The charge was filed on February 18, 1987 and asserts that this conduct violates SEERA section 3519(b).

I indicated to you in my attached letter dated April 14, 1987, that the charge did not state a prima facie case. You were advised that if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge accordingly. You were further advised that unless you amended the charge to state a prima facie case, or withdrew it prior to April 21, 1987, they would be dismissed. On April 17, 1987 you requested an extension of time to file an amendment until April 27, 1987. That request was granted.

I have not received either a request for withdrawal or an amended charge and am therefore dismissing the charge based on the facts and reasons contained in my April 7, 1987 letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, 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 (California Administrative Code, title 8, section 32635(a)). To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. Code of Civil Procedure section 1013 shall apply (section 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 copies of a statement in opposition within twenty calendar days following the date of service of the appeal (section 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 each copy of a document served upon a party or filed with the Board itself. (See section 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 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 (section 32132).

Final Date

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

Sincerely,

JEFFREY SLOAN
General Counsel

BY _____
Jorge Staff Jorge A. Leon
Staff Attorney

Attachment

8913d

PUBLIC EMPLOYMENT RELATIONS BOARD
Headquarters Office
1031 18th Street
Sacramento, CA 95814-4174
(916) 322-3068

April 14, 1987

Ms. Mary L. Williams-Edwards
Labor Relations Representative
Mr. Darrell Steinberg
Attorney
California State Employees Association
1108 O Street
Sacramento, CA 95814

Re: CSEA v. State of California (Calif. Community Colleges)
Case No. S-CE-306-S

Dear Ms. Williams-Edwards and Mr. Steinberg:

You have filed a charge alleging that Respondent State of California, California Community Colleges (CCC) violated the State Employer-Employee Relations Act (SEERA) when it, "continuously implemented a policy of making out-of-class assignments between bargaining units when assigning employees to assist in evaluation community colleges." The charge asserts that this conduct violates SEERA section 3519(b) and was filed on February 18, 1987.

My investigation revealed the following information. Charging Party California State Employees Association (CSEA) represents CCC employees in Units 1 and 3. The Chancellor's Office of the CCC performs accreditation evaluations of the community colleges on an annual basis. According to Charging Party the evaluation work is a classification assignment intended for the Unit 3 employees. However, during the last three years the CCC has assigned evaluation work to Unit 1 employees.

Charging Party cites examples of this alleged transfer of work from one unit to another on approximately November 29, 1984 when CCC assigned Moni Van Camp and Dale Clevenger, Unit 1 employees in place of Unit 3 employees Barbara Sullivan and Jean Clawson; and October 4, 1985 when Unit 1 employees Ed Connolly and John Puthuff replaced Unit 3 employees Al Wilson and Win Silva. On both occasions, Charging Party filed

grievances contesting the assignments. Both grievances were pursued to the Chancellor's Office level and then dropped. The 1985 grievance ended in June, 1986.

The most recent incident took place in September, 1986, when Unit 1 employees Norma Morris and Walter Reno replaced Unit 3 employees Bill Boakes and Al Metzler. Charging Party has presented no further information regarding assignment of the evaluation work prior to 1984 or at any other time.

ANALYSIS

Government Code section 3514.5 provides that the PERB shall not:

> (1) issue a complaint in respect of any charge based upon an unfair practice occurring more than six months prior to the filing of the charge. . .

The November, 1985 and October, 1985 conduct occurred before the six-month preceding the filing of the charge. Furthermore, the grievances which followed were dropped before the same period. Under the doctrine of equitable tolling, the statute of limitations is tolled during the period in which a grievance concerning the complained-of conduct is pursued. Los Angeles Unified School District (1983) PERB Decision No. *311.* The doctrine does not appear to apply here because the charge itself was filed on February 18, 1987, which is more than six months after the date when the grievances were terminated. The allegations of November, 1984 and October, 1985 conduct are thus time-barred.

Charging Party asserts that CCC's September, 1986 conduct is a violation of SEERA section 3519(b). That provision makes it unlawful for the employer to deny an employee organization rights guaranteed under the SEERA. The employer's conduct is more appropriately analyzed as a transfer of unit work in violation of SEERA section 3519(c), which provides that it is unlawful for an employer to fail to meet and confer in good faith with a labor organization. In determining whether a party has violated section 3519(c) of SEERA, the PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of

such conduct on the negotiating process. Stockton Unified School District (1980) PERB Decision No. 143. Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented prior to the employer notifying the exclusive representative and giving it an opportunity to request negotiations. Walnut Valley Unified School District (1981) PERB Decision No. 160; Grant Joint Unified High School District (1982) PERB Decision No. 19b. Although the cases cited arose under the Educational Employment Relations Act (EERA), is equally applicable to cases under SEERA as section 3543.5(c) of the EERA and 3519(c) of the SEERA are identical.

It does not appear that a prima facie case of a SEERA violation has been established for the following reasons. The parties' current Memorandum of Understanding (MOU) contains no provision which gives the evaluation work exclusively to Unit 3 employees. Thus, there is no change in any policy provided in the MOU.

Furthermore, there does not appear to be a change in a past practice. Other than citing the three examples when the alleged Unit 3 work was given to Unit 1 employees, the charge fails to present any other instances of the evaluation work being given to Unit 3 employees. Under the facts presented, it cannot be concluded that there has been a past practice to provide this work exclusively to Unit 3 employees. Thus, the charge does not support an allegation that the CCC has effected any change in policy.

For these reasons, the charge as presently written does not state a prima facie case. If you feel that there are any factual inaccuracies in this letter or any additional facts which would correct the deficiencies explained above, please amend the charge accordingly. The amended charge should be prepared on a standard PERB unfair practice charge form clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or

withdrawal from you before April 21, 1987, I shall dismiss your charge. If you have any questions on how to proceed, please call me at (916) 323-8015.

Sincerely,

Jorge A. Leon
Staff Attorney

8511d