STATE OP CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CLIFF FRIED, et al.,	)	
	)	
Charging Party,	)	Case No. LA-CE-250-H
	)	
v.	)	PERB Decision No. 029-H
	)	
REGENTS OF THE UNIVERSITY OF CALIFORNIA,	)	July 24, 1990
	)	
	)	
Respondent.	)	
	)	

Appearances: Cliff Fried, Representative for American Federation of State, County and Municipal Employees; Sandra J. Rich, Assistant Labor Relations Manager, for Regents of the University of California.

Before Craib, Camilli, and Cunningham, Members.

DECISION AND ORDER

CAMILLI, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the charging parties to the proposed decision (attached hereto) of a PERB administrative law judge which held the Regents of the University of California (UC) did not violate the Higher Education Employer-Employee Relations Act (HEERA) section 3571(a) and (b)[1] but, rather satisfied its obligation under the Act to

[1]**HEERA** is codified at Government Code section 3560 et seq. Section 3571 states, in pertinent part:

> It shall be unlawful for the higher education 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 rights guaranteed by this chapter.

meet and discuss with regard to its decision to raise the parking rates at the UC Los Angeles campus.

The Board has reviewed the entire record in this case, including the charging parties' exceptions and UC's response thereto, and, finding the proposed decision to be free from prejudicial error, adopts it as the decision of the Board itself.

The unfair practice charge in Case No. LA-CE-250-H is hereby DISMISSED WITH PREJUDICE.

Members Craib and Cunningham joined in this Decision.

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

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

CLIFF FRIED, et al.,	)	
	)	Unfair Practice
Charging Party,	)	Case No. LA-CE-250-H
	)	
v.	)	**PROPOSED DECISION**
	)	
REGENTS OF THE UNIVERSITY OF CALIFORNIA,	)	(3/27/90)
	)	
Respondent.	)	
	)	

Appearances: Cliff Fried, Representative, AFSCME Council 10, for American Federation of State, County and Municipal Employees; Sandra Rich, Assistant Labor Relations Manager, for Regents of the University of California.

Before Fred D'Orazio, Administrative Law Judge.

PROCEDURAL HISTORY

This unfair practice charge was filed by Cliff Fried and other American Federation of State, County, and Municipal Employee members (hereafter Charging Parties) in bargaining units at the University of California at Los Angeles (UCLA) where no exclusive representative exists. The charge, filed on March 13, 1989, alleges that the Regents of the University of California (hereafter Respondent) increased parking rates at its Los Angeles campus (UCLA) without meeting and discussing the change. It is alleged that this conduct violated the Higher Education Employer-Employee Relations Act (HEERA or Act), sections 3571(a) and (b).[1]

[1]The HEERA is codified at Government Code section 3560 et seq. Unless otherwise indicated, all statutory references are to the Government Code. Sections 3571(a) and (b) state that it shall be unlawful for the employer to:

The General Counsel of the Public Employment Relations Board (PERB or Board) issued a complaint on July 17, 1989. Respondent answered the complaint on August 10, 1989, denying that it violated the Act. The informal conference, held on August 15, 1989, did not resolve the dispute.

A formal hearing was conducted by the undersigned in Los Angeles, California on November 1 and 2, 1989. The last post-hearing brief was received on February 27, 1990.

FINDINGS OF FACT

Introduction

Cliff Fried and Peter Goodman are employees within the meaning of section 3562(f). AFSCME, an employee organization within the meaning of section 3562(g), represented Fried and Goodman in the meet and discuss sessions in this case. AFSCME is not an exclusive representative, of Fried or Goodman within the meaning of section 3562(j). Respondent is an employer within the meaning of section 3562(h).

Parking Fee Increase

The process for increasing parking rates at UCLA typically begins approximately one year prior to the desired implementation

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

date. According to Mark Stocki, business and transportation administrator who is responsible for a wide range of transportation-related services at UCLA, the process begins with low-level analysis of various options in areas such as construction schedules, parking expansion, fees, etc. As the analysis evolves, parking estimates are fine-tuned in context of the entire transportation system. The subject moves up the administrative chain and is reviewed by higher level administrators, eventually arriving at the Executive Budget Committee. Chaired by the chancellor, the committee includes deans, academic representatives, and administrators.

According to Stocki, the committee ultimately decides that the proposal has been "brought to a level of sophistication that it should move forward." At this point, the proposal is reviewed with the Academic Senate, the Staff Assembly and various student groups. A notice of intent to increase fees and solicit input is then issued to employees and employee organizations. After receiving input, the committee conducts more meetings leading to a decision on fees. The final decision is made by the chancellor, with input from a broad spectrum of interested parties.

The decision that the proposed fee increase had reached the desired "level of sophistication" was made on January 11, 1989.[2] On February 15, Raymond Schultze, administrative vice chancellor,

[2]Unless otherwise noted, all dates refer to 1989.

sent a memo announcing the increase to "all UCLA academic and staff employees." Schultze described the increase as follows:

> After several months of program planning analysis and administrative review, it has become apparent that we must raise campus parking fees, effective July 1, 1989. This increase is the first in two years, parking fees having last been raised in July 1987. The July 1, 1989 increase will change the basic $22/month permit fee to $30/month and the daily entry fee from $3.00 to $4.00/entry.

The memo also announced increases in approximately eight other subordinate fee areas; e.g., night permits, meters, courtesy permits, etc.

Fried and Goodman, both AFSCME representatives, believed that the wording of the notice suggested a fait accompli. They believed Respondent had no intention to change the proposed fees reflected in the February 15 memo. However, Stocki testified that the announcement did not represent a final decision. Relying on past practice, he testified, "as with every other notice that has gone out in the past on parking fees, we solicited input. It was definitely not a final decision." Respondent solicited input with respect to proposed increases in 1981, 1982, 1985 and 1987, altering its initial proposal on at least two occasions after receiving input from employees and employee organizations.

The memo itself is ambiguous in this regard. For example, at one point it states that the changes "will" take place. At another point, it states that the changes are merely "planned." Internal memoranda generated as part of the planning process

described above indicate that the changes were not fixed. A November 18, 1988 memo from Stocki to a group of administrators refers to the parking fee increases as "recommendations." A January 1 memo from H.B. Thompson, assistant vice chancellor-business, to Carlene Miller, budget and finance management director, refers to the "proposed" parking fees for 1989-90. As more fully discussed below, it is concluded that the changes described in the February 15 memo were not set in concrete.

Schultze's February 15 memo stated the rationale for the increase as follows:

> The Campus Parking Service is a totally self-supporting auxiliary enterprise which, by state policy, is not supported by state or other public funds. User fees are set at levels sufficient to pay all expenses of the campus parking and transportation system, including total debt service. This fee increase is required in order to keep pace with escalating operating costs and to provide sufficient funds for the payment of bond indebtedness on existing and planned future parking facilities. Emphasis in original.

On March 28, Fried (jointly with other AFSCME locals) requested detailed information concerning the parking fee increase. On April 7, Fried wrote to Sandra Rich, assistant labor relations manager, requesting to meet and discuss the increase in parking fees. On April 17, Rich provided the information and informed Fried that she was prepared to meet.

On April 20, 1989, Schultze sent out another memo to all UCLA faculty and staff announcing changes in the February 15 announcement of the intent to increase parking fees. The

changes, made as a result of suggestions by faculty, staff, and at least one other employee organization, did not affect the monthly permit or daily entry fee set forth in the initial memo. Charging Parties later indicated that they were "happy" with these changes.[3]

The first of two "meet and discuss" sessions was held on May 12. Fried and Goodman complained that notice was not given in a timely manner, essentially making a sham of the obligation to meet and discuss. Fried claimed the parking increases were already set in concrete, and there was not enough time, prior to July 1, to address funding needs raised by the University. Rich responded that there was no obligation to give notice of a proposed change until a "semifirm" decision had been reached. She took the position that the February 15 notice satisfied this obligation. She told AFSCME representatives she was there to consider the union's position and input.

The parties discussed alternative fund sources to help alleviate the cost of campus parking. Rich and Stocki rejected as unrealistic the suggestion that donors be asked to finance new parking structures on campus. AFSCME representatives asked

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[3]The following is a summary of the changes announced by Schultze on April 20. A ridesharing card, entitling the holder to certain preferential parking, would be made available for $10.00. Ridesharing cardholders would be charged a daily entry fee of $3.00, rather than $4.00. The estimated cost of the changes related to the ridesharing cardholders is $100,000. In addition, Schultze announced that the campus express service would be extended. This change was requested by another employee organization and cost $25,000 for six months in 1989. Other changes included a new reduced-fee weekend permit, and consideration of implementing a two-person carpool in 1990-91.

whether the Master Plan for Higher Education in California prohibited the University from seeking other funds for parking. It was AFSCME's firm position that alternative funding sources should be pursued. The Master Plan, according to AFSCME, contained only recommendations regarding funding sources. It did not mandate that user fees fund the parking program. Fried testified repeatedly throughout the hearing that Respondent was not legally prohibited from seeking alternative funding. Rather, Fried contended, it chose not to do so as a policy matter.

Stocki responded that, consistent with the Regents' interpretation of the Master Plan, UCLA policy rejected seeking alternative funds, and it was not realistic to pursue state funds due to the scarcity of such funds in general. According to Stocki, a well-established past practice supported his position. Alternative funds had not been used during the last "10 or 20 years." He testified that this position is based on the concept that parking is a "self supporting auxiliary enterprise" which supports the entire transportation system. Stocki also explained that the University was obligated under a 1986 bond to maintain a debt service ratio of 1.35.[4]

Near the end of the meeting, AFSCME submitted its initial proposal. It proposed that holders of blue permits, primarily managers and administrators, pay a monthly fee of $30.00.

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[4]The debt service ratio represents the relationship of net revenue to maximum aggregate annual debt. Net revenue is defined as annual income generated by parking fees less operating costs.

Holders of yellow permits, primarily staff members, pay a monthly fee of $26.00. Rich responded that the monthly fee could be reduced below the $30.00 figure, but not without cost to other programs. The bond does not mandate specific fees and several arrangements could have met bond requirements. Rich said she would consider the proposal. The meeting lasted 90 minutes.

On May 17, prior to the next meet and discuss session, Fried submitted a written proposal to Rich. He proposed: (1) monthly parking fee increases be set at $26.00, "without a loss in any other projected new programs and/or any cuts in existing parking service programs"; (2) the Chancellor's fund, containing one half of all parking citation monies, be used to help lower costs associated with parking; and (3) the University find alternative state and/or private funding for its present capital development and future projects. Fried also reiterated his position that fees paid by students, staff and faculty should supplement private and state funds for auxiliary operations, such as parking.

Prior to the second meet and discuss session on May 31, Stocki costed out Fried's proposals. At the meeting, he explained that the first proposal, $26.00 fee for both blue and yellow permits, produced a debt service ratio of 1.21. The debt service ratio under the second proposal, $26.00 for a yellow permit and $30.00 for a blue permit, was 1.25. Neither proposal was viable under the required 1.35 debt service ratio, Stocki

explained during the meeting.[5] Fried then requested a copy of the bond which required the debt service ratio.[6]

Also on May 31, Rich responded to another aspect of AFSCME's May 17 written proposal. The chancellor's contingency fund contained only about $800,000. This money, Rich explained, is committed to other uses; e.g., child care services, asbestos removal, renovation of handicapped access, and small seismic projects. The fund also supports academic projects such as the Marcus Garvey papers and Black Scholars.

Fried reiterated the arguments made at the May 12 meeting. Rich responded that notice of the change in fees was adequate, some modifications of the February 15 memo had already been made, and other modifications to provide additional alternate transportation services were under consideration. Essentially, the parties' positions remained unchanged. The May 31 meeting lasted approximately 90 minutes.

On June 5, Rich sent Fried a copy of the bond and various other documents requested at the May 31 meeting. On June 6,

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[5]At Rich's request, Stocki also ran a cost analysis using $2 9.00 as the fee for both monthly permits. The result, at least for one year, was that the program would have been viable. There would have been no default and there would have been balance.

[6]Fried testified that, prior to the 1989 parking increase, he was unaware of the specific limitations imposed by the bond. However, funding limitations stemming from the bond indebtedness as well as the inability to use state funds had been discussed during the four prior parking increases in 1981, 1982, 1985 and 1987. Although the specifics of these limitations may not have been discussed in detail, it is clear from the record that AFSCME and Fried were generally aware of these limitations prior to the 1989 increase.

Fried sent Rich another proposal. He again argued that state funds can be used for parking structures, and the Master Plan does not prohibit use of alternate funding. He also argued that the chancellor's "discretionary funds, surpluses and/or other funding beyond need" be given to employees in the form of a rebate. Rich responded that "sound business practices require the department to maintain a prudent year-end balance in order to minimize future years' increases and to cover emergency situations."[7] Rich rejected the proposal as "unfeasible." At the hearing, Stocki explained that any surplus must be "rolled back" into the system on an annual basis to pay for the overall transportation program, including new parking structures or lots. AFSCME made no other proposals regarding the monthly fees or any of the subordinate fees.

On June 19, UCLA announced its final decision related to the changes in parking and transportation system. The fee for both monthly permits was raised to $30.00. The changes reflected in Schultze's April 20 memo, and additional changes based on input received after April 20, were adopted.[8] The changes were implemented July 1.

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[7]Stocki also testified that a parking fee rebate was not possible. Any parking fee excess is rolled back into the system on an annual basis to fund construction of surface lots, earthquake related work, and resurfacing existing lots.

[8]Examples of post-April 20 changes are: no vanpool increase, incentives for vanpool drivers, implementation of a guaranteed ride home program, etc.

ISSUE

Whether Respondent breached its obligation to meet and discuss changes in parking fees at UCLA?

DISCUSSION

A nonexclusive representative has the right to meet and discuss with an employer changes in matters of "fundamental" interest to employees. Regents of the University of California (1984) PERB Decision No. 470-H, adopting decision of ALJ at p. 51; Regents of the University of California v. PERB (1985) 168 Cal.App.3d 937 [214 Cal.Rptr. 698], Whether an employer has breached this obligation is decided on a "case-by-case basis." Regents of the University of California, supra, PERB Decision No. 470-H, adopting decision of ALJ at p. 54. Although an employer must meet and discuss proposed changes with a nonexclusive representative of employees, there is no duty to meet and negotiate. Good faith requires neither the obligation to reach agreement nor to continue meeting until impasse. Id. Under some circumstances, providing the union an opportunity to present alternatives along with supporting rationale satisfies the obligation. *Id*. Under these principles, there was no breach of the duty to meet and discuss the parking change.

The general subject of parking costs is of fundamental interest to employees. See Regents of the University of California (1983) PERB Decision No. 356-H. Thus, Respondent had an obligation to provide notice and an opportunity to meet and discuss the proposed changes.

Contrary to the position taken by the Charging Parties, Schultze's February 15 memo to all staff and faculty satisfied notice requirements. The meetings which occurred prior to that date were preliminary in nature. It was not until January 11 that the committee determined the proposal was ready to go forward. The February 15 notice announced an implementation date of July 1, leaving approximately four months to meet and discuss the changes. Under the circumstances presented here, this was a "reasonable" amount of time to discuss the proposed changes. See Victor Valley Union High School District (1986) PERB Decision No. 565, p. 5.

In addition, the announcements in Schultze's February 15 memo were not set in concrete. Stocki's testimony that the memo did not represent a final decision is supported by the record. The increase was described by at least two administrators late in the planning stage as a "recommendation" or "proposal." There were several fairly significant changes, applauded by the Charging Parties, announced on two occasions after February 15. See footnotes 3 and 8, supra. Even the proposed monthly fee of $30.00, the key item here, could have been changed, albeit at the expense of other programs. But Charging Parties proposed that none of the other programs be reduced, focusing almost exclusively on an attempt to secure a lower monthly fee. Under the circumstances, the February 15 memo cannot be described as a fait accompli. The notice was not defective. See Lake Elsinore School District (1988) PERB Decision No. 696.

Nor does Respondent's post-February 15 conduct support the conclusion that it breached the meet and discuss obligation. Respondent met with Charging Parties on two occasions, each lasting approximately 90 minutes. Detailed information was provided in a timely manner. Charging Parties presented several proposals orally and in writing. All proposals were discussed in detail, or otherwise responded to in writing. Alternative sources of funding were debated, as were funding limitations imposed by the bond. Stocki even costed out Charging Parties' proposals and reported that they were not viable under the debt service ratio imposed by the bond. Plainly, Charging Parties were given ample opportunity to meet and discuss the changes in parking fees. The post-February events do not suggest bad faith.

Nevertheless, Charging Parties offer several arguments in support of their position that Respondent acted in bad faith. Charging Parties first contend that neither the Master Plan for Higher Education nor state law mandates use of employee parking fees to finance the parking system. According to Charging Parties, alternative sources of funding, such as state funding, can be used to finance such projects. Respondent's refusal, as a matter of policy, to seek alternative funds is viewed by Charging Parties as evidence of bad faith. These arguments are not persuasive.

Stocki informed the Charging Parties at the May 12 meeting that, under Respondent's interpretation of the Master Plan, use of alternative funds has been prohibited, and it was unrealistic

to seek scarce state funding. Stocki's position is supported by a "10 or 20 year" practice of not using alternative funds, and AFSCME had been aware of this practice since at least 1981. It appears well established that the University parking system has in the past been self-supporting. See Regents of the University of California, supra, PERB Decision No. 356-H. Under these circumstances, Respondent's refusal to agree with Charging Parties' alternative funding approach does not show bad faith.

In any event, the evidence shows that the parties in this case simply disagreed about funding. Neither a legal dispute nor a policy choice about available sources of funding, without more, shows bad faith. The meet and discuss obligation does not require agreement, nor does it even require that the parties continue to meet until impasse. It requires only that designated employee organizations be given an opportunity to discuss issues and provide input and/or suggestions about a particular course of action. Charging Parties were afforded this opportunity in the present case, but could not convince Respondent to alter its position on funding. Not even in a true bargaining setting is the employer required to yield a position fairly maintained. See Oakland Unified School District (1981) PERB Decision No. 178, pp. 7-8.

Charging Parties next assert that they were never given an opportunity to participate in decisions to issue any of the bonds. According to Charging Parties, it is unfair to exclude them from the bond issuance stage and thereafter raise funding

constraints contained in the bonds during the meet and discuss process. It is claimed that this indicates bad faith. This argument is not persuasive.

Assuming the decision to issue bonds is appropriately a part of the meet and discuss process, an issue not fully litigated here, the evidence in this area does not show bad faith. Charging Parties knew of the bond issues since at least 1981. Funding limitations imposed by the bonds were communicated to AFSCME and employees in connection with parking increases in 1981, 1982, 1985 and 1987. This was not a new subject in 1989. Yet there is scant evidence to indicate what action, if any, AFSCME took in connection with the bond issues or the requirements imposed by the bonds. Therefore, no bad faith can be attributed to Respondent because it adhered to funding constraints imposed by a bond issued in 1986.

CONCLUSION

Based on the foregoing findings of fact, conclusions of law and the entire record herein, it is hereby ordered that Unfair Practice Charge No. LA-CE-250-H be dismissed.

Pursuant to California Administrative Code, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself at the headquarters office in Sacramento within 20 days of service of this Decision. In accordance with PERB Regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any,

relied upon for such exceptions. See California Administrative Code, title 8, section 32300. A document is considered "filed" when actually received before the close of business (5:00 p.m.) on the last day set for filing ". . .or when sent by telegraph or certified or Express United States mail, postmarked not later than the last day set for filing . . . ." See California Administrative Code, title 8, section 32135. Code of Civil Procedure section 1013 shall apply. Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. See California Administrative Code, title 8, sections 32300, 32305 and 32140.

Dated: March 27, 1990

Fred D'Orazio
Administrative Law Judge