

STATE OF CALIFORNIA
 DECISION OF THE
 PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA SCHOOL EMPLOYEES)	
ASSOCIATION AND ITS SAN BENITO)	
CHAPTER 173,)	
)	
Charging Party,)	Case No. SF-CE-1691
)	
v.)	PERB Decision No. 1076
)	
SAN BENITO HIGH SCHOOL DISTRICT,)	December 16, 1994
)	
Respondent.)	
)	

Appearances; California School Employees Association by Burnette Murphy, Representative, for California School Employees Association and its San Benito Chapter 173; Breon, O'Donnell, Miller, Brown & Dannis by Brant T. Lee, Attorney, for San Benito High School District.

Before Caffrey, Carlyle and Garcia, Members.

DECISION AND ORDER

CARLYLE, Member: This case is before the Public Employment Relations Board (Board) on appeal of a Board agent's dismissal (attached) of an unfair practice charge filed by the California School Employees Association and its San Benito Chapter 173 (Association). The Board agent found that the charge alleging that the San Benito High School District (District) unilaterally changed the duties of a campus supervisor did not state a prima facie case in violation of section 3543.5(a), (b), and (c) of the Educational Employment Relations Act (EERA).¹

¹EERA is codified at Government Code section 3540 et seq. Section 3543.5 states, in pertinent part:

It shall be unlawful for a public school employer to do any of the following:

The Board has reviewed the warning and the dismissal letters, the original and amended charges, the Association's appeal and the District's response thereto. The Board finds the Board agent's dismissal to be free of prejudicial error and adopts it as the decision of the Board itself.

The unfair practice charge in Case No. SF-CE-1691 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Caffrey and Garcia joined in this Decision.

(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. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

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

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 557-1350



May 31, 1994

Bernette Murphy
California School Employees Association
P.O. Box 640
San Jose, California 95106

Re: **DISMISSAL OF UNFAIR PRACTICE CHARGE/REFUSAL TO ISSUE COMPLAINT**
California School Employees Association and its Chapter #171
v. San Benito High School District
Unfair Practice Charge No. SF-CE-1691

Dear Ms. Murphy:

The above-referenced unfair practice charge, filed on February 17, and amended on May 27, 1994, unilaterally changed the job duties of the Campus Supervisor, engaged in bypassing of the California School Employees Association and its Chapter #171 (Association) and undermined the Association. This conduct is alleged to violate Government Code section 3543.5(a), (b), and (c) of the Educational Employment Relations Act (EERA).

I indicated to you, in my attached letter dated May 11, 1994, that the above-referenced 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. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to May 19, 1994, the charge would be dismissed. I granted you a brief extension of time within which to file an amended charge.

On May 27, 1994, you filed an amended charge. The only new allegation in the charge is that the duty of "identifying" weeds was one exclusively assigned to the classification of Grounds Worker/Custodian and that the District unilaterally transferred this duty to the classification of Campus Supervisor. This bare allegation is insufficient to demonstrate a negotiable change in working conditions in light the other allegations in the charge. As it appears from the facts presently alleged in the charge, for Grounds Worker/Custodians, "identifying weeds" is a task integrated with the specifically assigned duties of "hoeing weeds" and "spraying weeds" (i.e., eradicating weeds). This is not the type of "identification" duty that appears to have been alleged in the charge with respect to Campus Supervisors. For example, Superintendent George Hearn announced to Campus Supervisors that he was "developing a form for the identification and location of weeds." Vice Principal Tim Shelito described the

Dismissal, etc.
SF-CE-1691
May 31, 1994
Page 2

work as "reporting of weeds to their supervisor." The duty assigned to Campus Supervisors appears to have been one which was newly created and designed merely to aid the Grounds Worker/Custodians in the regular performance of their weed eradication duties. (Alum Rock Union Elementary School District (1983) PERB Dec. No. 322 [managerial prerogative to assign function not previously performed].) Neither the charge nor the amended charge allege that Grounds Worker/Custodians had previously performed this type of weed identification (i.e., noting the location of weeds on a form and reporting it to their supervisor) before eradicating them.

Moreover, even though it may be argued that the District technically transferred a duty to the Campus Supervisor, the transfer is not shown to be significant enough to make the matter negotiable. (Alum Rock Union Elementary School District, *supra*, PERB Dec. No. 322 [significant change in an employee's actual job duties, as contrasted with wholesale transfer of duties from one classification to another]; Rio Hondo Community College District (1982) PERB Dec. No. 279; Mt. San Antonio Community College District (1983) PERB Dec. No. 297.) It also does not appear that the mediatory influence of collective bargaining is compelled for this type of decision. (Anaheim Union High School District (1981) PERB Dec. No. 177.)

Therefore, I am dismissing the charge based on the facts and reasons stated above and those contained in my May 11, 1994 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. (Cal. Code of Regs., tit. 8, sec. 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 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. (Cal. Code of Regs., tit. 8, sec. 32135.) Code of Civil Procedure section 1013 shall apply. 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

Dismissal, etc.
SF-CE-1691
May 31, 1994
Page 3

copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Cal. Code of Regs., tit. 8, sec. 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 Cal. Code of Regs., tit. 8, sec. 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. (Cal. Code of Regs., tit. 8, sec. 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,

ROBERT THOMPSON
Deputy General Counsel

By _____
DONNGINOZA
Regional Attorney

Attachment

cc: Brant T. Lee

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 557-1350



May 11, 1994

Bernette Murphy
California School Employees Association
P.O. Box 640
San Jose, California 95106

Re: **WARNING LETTER**
California School Employees Association and its Chapter #171
v. San Benito High School District
Unfair Practice Charge No. SF-CE-1691

Dear Ms. Murphy:

The above-referenced unfair practice charge, filed on February 17, 1994, unilaterally changed the job duties of the Campus Supervisor, engaged in bypassing of the California School Employees Association and its Chapter #171 (Association) and undermined the Association. This conduct is alleged to violate Government Code section 3543.5(a), (b), and (c) of the Educational Employment Relations Act (EERA).

Investigation of the charge revealed the following. The Association is the exclusive representative of a bargaining unit composed of classified employees in the District. There exists a classification known as Campus Supervisor. The job description defines the position in the following terms: "Under general supervision, to assist in making the campus secure and to do related work as required." The job descriptions lists examples of duties as follows: "Assist in crossing students to and from East Campus; cleans campus after tardy bells, checks students out on campus for valid passes; reports all student management infractions; checks restrooms; reports all loiterers and/or non-students; supervises In House Suspension/Pre Expulsion Center; transports students to their homes when requested; and may patrol off campus in school vehicle." The job description does not make any specific reference to the identification or control of weeds.

The classification of Groundswoker/Custodian lists as duties the raking of leaves, hoeing of weeds, and spraying of weeds.

On or about August 30, 1993, Gregory Hearn, Superintendent, attended a meeting of Campus Supervisors at which time he expressed his concern of weeds on campus and his desire to address the problem by developing a form for the identification and the location of weeds. He indicated that Campus Supervisors were to identify locations of weeds on the campus, note them on a form he provided, and submit the forms directly to his office or

Warning Letter
SF-CE-1691
May 11, 1994
Page 2

to their immediate supervisor. The forms were distributed on or about September 13, 1992.

On or about September 30, 1993, Bernette Murphy, Labor Relations Representative of the Association, complained to Hearn during an Employer/Employee Relations Committee meeting about the unilateral implementation of the duty of weed identification for Campus Supervisors. The charge alleges that Hearn "exploded." He turned away from Murphy and directly to Diane Fletcher, a Campus Supervisor and appointee to the Committee, and "in an accusatory and threatening tone insisted that she account for any burden the additional duty had created." "Hearn's tone, demeanor, and actions were coercive and intimidating." The Association contends that Hearn's refusal to address Murphy denied employees their right to be represented by the Association.

In a letter dated September 30, 1993, the Association demanded that the District cease and desist the implementation of the duty of weed identification and to meet and negotiate over the matter.

On or about October 1, 1993, Tim Shelito, Vice Principal, met with Campus Supervisors and discussed the need to identify weeds and use the form. In addition, he falsely represented that the District and the Association were negotiating the issue. On or about October 11, Shelito again met with Campus Supervisors and falsely asserted that the subject was being negotiated. The charge alleges that "Shelito proceeded to negotiate directly with the Campus Supervisors by arguing that their reporting of weeds to their supervisor would not be telling on fellow unit members." He also advanced to them the proposal that an in-service training could be arranged to assist in the identifying of weeds. Shelito also told the employees that they could be replaced if they did not perform the duty of identifying weeds.

On or about October 11, the District rejected the Association's demand to bargaining asserting that the matter was not negotiable.

Based on the facts stated above, the charge as presently written fails to state a prima facie violation of the EERA for the reasons that follow.

The principal issue in the case is whether the Campus Supervisors' new job duty of identifying weeds was within the scope of representation and therefore negotiable. In Rio Hondo Community College District (1982) PERB Dec. No. 279, the Public Employment Relations Board (PERB) held that there is no duty to

Warning Letter
SF-CE-1691
May 11, 1994
Page 3

negotiate where a new assignment is reasonably comprehended within the scope of existing job duties.

The Association contends that the job description of Campus Supervisor relates to "maintaining campus order by means of controlling student behavior," does not include any provision requiring that employees pick up trash, and does not include any duties pertaining to the identification or control of weeds.

The job description describes a five hour per day position in which the Campus Supervisor apparently begins the work day assisting students in arriving on campus safely and subsequently patrols the campus to control the movement of students and identify loiterers. However, the job description also specifically provides that a Campus Supervisor "cleans [the] campus after tardy bells" and "checks restrooms." Therefore, it does not appear to confine duties to those related to "controlling student behavior." The job description also provides that as part of the duty to make the campus secure, the District may assign other "related work as required." Although the Groundswalker/Custodian position does appear to require the eradication of weeds, and the identification of weeds would clearly be a related duty, that job description does not mutually exclude the duty of weed identification from the job description of the Campus Supervisor.

The Association was afforded an opportunity to provide further evidence and/or argument as to why the identification of weeds was not reasonably comprehended within the scope of existing job duties, but it has not responded.


It is concluded that the charge fails to contain sufficient evidence to conclude that the duty of identifying the location of weeds on campus is not reasonably comprehended within the scope of existing job duties for the position of Campus Supervisor. Therefore, it has not been shown that the subject is negotiable.

The District's subsequent actions involving a refusal to respond to the Association's demand to bargain, refusal to address Association representative Murphy at the September 30, 1993 meeting, Vice Principal's Shelito's misrepresentations about the matter being under negotiation, his alleged bypassing based on attempting to convince Campus Supervisors that they would not be telling on fellow employees and proposing an in-service, and his threatening them with loss of their jobs if they did not perform the new duty also fail to state prima facie violations because the District was within its rights to assign the new duty.

Warning Letter
SF-CE-1691
May 11, 1994
Page 4

For these reasons the charge, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts which would correct the deficiencies explained above, please amend the charge. 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 May 19, 1994, I shall dismiss your charge. If you have any questions, please call me at (415) 557-1350.

Sincerely,


DONNGINOZA
Regional Attorney