STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

RICHARD B. KIDD AND JOANN HENDRICKS,	)	
Charging Parties,	)	Case No. SF-CO-466
v.	)	PERB Decision No. 1084
SAN FRANCISCO COMMUNITY COLLEGE DISTRICT FEDERATION OF TEACHERS,	)	February 21, 1995
Respondent.	)	

Appearances: Richard B. Kidd and Joann Hendricks, on their own behalf.

Before Blair, Chair; Garcia and Johnson, Members.

DECISION

BLAIR, Chair: This case is before the Public Employment Relations Board (PERB or Board) on an appeal filed by Richard B. Kidd and Joann Hendricks (collectively Charging Parties) of a Board agent's dismissal (attached hereto) of their unfair practice charge. In their charge, the Charging Parties allege that the San Francisco Community College District Federation of Teachers (Federation) violated section 3543.6(b) of the Educational Employment Relations Act (EERA)[1] when it refused to

[1]EERA is codified at Government Code section 3540 et seq. Section 3543.6 states, in pertinent part:

> It shall be unlawful for an employee organization to:
>
> (b) 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.

permit a referendum to challenge a provision of the Federation's Constitution and By-laws which provides for the automatic increase of dues whenever affiliation taxes on local chapters are increased.

The Board has reviewed the warning and dismissal letters, the Charging Parties' unfair practice charge and their appeal. The Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself.

CHARGING PARTIES' APPEAL

On appeal, Charging Parties essentially raise the arguments previously considered by the Board agent. Citing California School Employees Association (Parisot) (1983) PERB Decision No. 280 (CSEA (Parisot)), Charging Parties contend that PERB is authorized to inquire into the Federation's internal affairs to determine "whether an employee organization has exceeded its authority." Charging Parties also argue that the mandatory pass-through provisions violate the federal Labor-Management Reporting and Disclosure Act (LMRDA). Charging Parties claim that without PERB intervention the members "would lack any feasible means for redress."

Charging Parties also respond to the statement provided by the Federation to the Board agent in the course of his investigation of the charge. Since the Federation's statement is properly excluded from the record before the Board and was not addressed in the warning and dismissal letters, it is both

unnecessary and inappropriate for the Board to consider these arguments.

DISCUSSION

Charging Parties' reliance on CSEA (Parisot) is inapposite. As noted by the Board agent, in CSEA (Parisot) the Board adopted the retaliation exception to the general rule that the Board will not inquire into the internal affairs of an employee organization. The Charging Parties did not allege facts indicating that the Federation refused to consider the referendum in retaliation for the Charging Parties participation in protected activities. Accordingly, the Board agent correctly determined that the Charging Parties failed to allege facts which met this exception.

The Charging Parties also argue that the actions of the Federation and the national affiliate violate the federal LMRDA. The Board agent adequately addressed this issue when he ruled that PERB is without jurisdiction to enforce this federal act and that the Charging Parties have not independently established a prima facie violation of the EERA. In addition, Charging Parties' claim that they are without any "feasible means for redress" is incorrect. Charging Parties may pursue any remedies available under the LMRDA.

ORDER

The unfair practice charge in Case No. SF-CO-466 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Member Johnson joined in this Decision.

Member Garcia's concurrence begins on page 4.

GARCIA, Member, concurring: Richard B. Kidd and Joann Hendricks (collectively Charging Parties) allege that the San Francisco Community College District Federation of Teachers (Federation) is in violation of the written agreement between the Federation and its members, including its Constitution and By-laws. Charging Parties theorize that the alleged conduct violates the Educational Employment Relations Act (EERA), but they failed to allege facts sufficient to constitute a prima facie case of an unfair practice.

In the absence of an unfair practice, the Public Employment Relations Board has no jurisdiction to enforce written agreements,[1] although the theory and remedy of the charge could be pursued through federal or state courts.

---

[1]**EERA** section 3541.5 provides, in pertinent part:

> (b) The board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of any agreement that would not also constitute an unfair practice under this chapter.

STATE OF CALIFORNIA PETE WILSON, *Governor*

PUBLIC EMPLOYMENT RELATIONS BOARD

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

August 5, 1994

Richard B. Kidd

Joann Hendricks

Re: **DISMISSAL OF UNFAIR PRACTICE CHARGE/REFUSAL TO ISSUE COMPLAINT**
Richard B. Kidd and Joann Hendricks v. San Francisco Community College District Federation of Teachers
Unfair Practice Charge No. SF-CO-466

Dear Mr. Kidd and Ms. Hendricks:

The above-referenced unfair practice charge, filed on July 1, 1994, alleges that the San Francisco Community College District Federation of Teachers (Federation) refused to permit a referendum initiated by Charging Parties to challenge a provision of its Constitution and By-laws calling for the automatic increase of dues whenever affiliation taxes on the local chapters are increased. This conduct is alleged to violate Government Code section 3543.6(b) of the Educational Employment Relations Act (EERA).

I indicated to you, in my attached letter dated July 27, 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 August 5, 1994, the charge would be dismissed.

I have not received either an amended charge or a request for withdrawal. You indicated in a telephone conversation on this date that you would not be filing an amended charge. Therefore, I am dismissing the charge based on the facts and reasons contained in my July 27, 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 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
Donn Ginoza
Regional Attorney

Attachment

cc: Robert J. Bezemek

STATE OF CALIFORNIA PETE WILSON, *Governor*

PUBLIC EMPLOYMENT RELATIONS BOARD

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

July 27, 1994

Richard B. Kidd

Joann Hendricks

Re: **WARNING LETTER**
Richard B. Kidd and Joann Hendricks v. San Francisco Community College District Federation of Teachers
Unfair Practice Charge No. SF-CO-466

Dear Mr. Kidd and Ms. Hendricks:

The above-referenced unfair practice charge, filed on July 1, 1994, alleges that the San Francisco Community College District Federation of Teachers (Federation) refused to permit a referendum initiated by Charging Parties to challenge a provision of its Constitution and By-laws calling for the automatic increase of dues whenever affiliation taxes on the local chapters are increased. This conduct is alleged to violate Government Code section 3543.6(b) of the Educational Employment Relations Act (EERA).

Investigation of the charge revealed the following. Richard B. Kidd and Joann Hendricks are employed by the San Francisco Community College District. The Federation is the exclusive representative of a bargaining unit composed of certificated employees of the District. Kidd and Hendricks are members of the Federation and of the bargaining unit represented by the Federation.

In 1988, at the urging of the American Federation of Teachers (AFT) national affiliate, the Federation's membership approved a "pass-through" provision, as set forth in By-laws article VII, section 1, which automatically increases the members' dues rate whenever affiliation taxes on the Local are increased. At the April 12, 1994 membership meeting, Rodger Scott, President of the Federation, was presented with a petition signed by 125 members, calling for a mail referendum to rescind the pass-through provision and require a membership voted before raising dues. Scott ruled that the petition was out of order. Charging Parties allege that such a referendum was properly submitted under the Federation's Constitution.

Scott maintained that he was required to reject the petition because rescinding the pass-through provision would conflict with national AFT policy. On May 10, 1994, the Federation's Executive Board rejected an appeal of Scott's ruling.

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 Public Employment Relations Board (PERB) has acknowledged that employee organizations are entitled to establish reasonable rules and regulations governing their internal affairs. (Service International Union, Local 99 (Kimmett) (1979) PERB Dec. No 106; California State Employees' Association (O'Connell) (1989) PERB Dec. No. 753-H.) PERB has held that matters concerning internal union affairs are immune from review, unless they have a substantial impact on the relationships of unit members to their employers so as to give rise to a duty of fair representation violation, or involve retaliation for protected activity.

The Federation's refusal to entertain the petition of Kidd and others appears to be immune from PERB review based on the internal unions affairs doctrine, and neither of the cited exceptions applies. (See also American Federation of State, County and Municipal Employees, Local 2620 (Cupp) (1987) PERB Dec. No. 612-S; California School Employees Association and its Chapter #318 (Harmening) (1984) PERB Dec. No. 442.)

Charging Parties assert that the AFT national affiliate is, governed by the Labor-Management Reporting and Disclosure Act (LMRDA), which provides that dues shall not be increased, except in the case of a local organization, by a majority vote. Charging Parties further contend that PERB may rely on federal precedent in construing provisions of the EERA. These arguments do not provide a basis for PERB intervention. PERB does not have jurisdiction to enforce the LMRDA, but only the EERA. (Gov. Code, sec. 3541.3; 3541.5.) Even assuming that the conduct alleged constitutes a violation of the LMRDA, such conduct does not ipso facto establish a violation of the EERA. The charge fails to establish that the internal union affairs doctrine, explained above, is inapplicable. (See California School Employees Association and its Chapter #318 (Harmening), supra, PERB Dec. No. 442.)

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 August 5. 1994. I shall dismiss your charge. If you have any questions, please call me at (415) 557-1350.

DONN GINOZA
Regional Attorney