STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

UNIVERSITY OF CALIFORNIA, LAWRENCE LIVERMORE NATIONAL LABORATORY,	)	
Charging Party,	)	Case No. SF-CO-43-H
v.	)	PERB Decision No. 1119-H
LLNL PROTECTIVE SERVICE OFFICERS ASSOCIATION,	)	October 4, 1995
Respondent.	)	

Appearances: Gabriela B. Odell, Attorney, for University of California, Lawrence Livermore National Laboratory; Carroll, Burdick and McDonough by Gary M. Messing, Attorney, for LLNL Protective Service Officers Association.

Before Garcia, Johnson and Caffrey, Members.

DECISION AND ORDER

CAFFREY, Member: This case is before the Public Employment Relations Board (Board) on an appeal of a Board agent's dismissal (attached) of an unfair practice charge filed by the University of California, Lawrence Livermore National Laboratory (Laboratory). In its charge, the Laboratory alleged that the LLNL Protective Service Officers Association (Association) failed to bargain in good faith in violation of section 3571.1(c) of the Higher Education Employer-Employee Relations Act (HEERA)[1] by

[1]HEERA is codified at Government Code section 3560 et seq. Section 3571.1 states, in pertinent part:

> It shall be unlawful for an employee organization to:
>
> (c) Refuse or fail to engage in meeting and conferring with the higher education employer.

failing to meet at reasonable times and endeavor to reach agreement on matters within the scope of representation.

The Board has reviewed the entire record in this case, including the warning and dismissal letters, the unfair practice charge, the Laboratory's appeal and the Association's response thereto. The Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself.

The unfair practice charge in Case No. SF-CO-43-H is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Garcia and Johnson joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916) 322-3198

July 18, 1995

Gabriela B. Odell, Assistant Laboratory Counsel
Lawrence Livermore National Laboratory
P.O. Box 808, Mail Stop L-701
Livermore, CA 94551-9900

Re: **NOTICE OF DISMISSAL AND REFUSAL TO ISSUE COMPLAINT**
University of California, Lawrence Livermore National Laboratory v. LLNL Protective Service Officers Association
Unfair Practice Charge No. SF-CO-43-H

Dear Ms. Odell:

I indicated to you, in my attached letter dated June 16, 1995, 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 June 26, 1995, the charge would be dismissed.

Your subsequent request for an extension of time in which to respond was granted, with a new deadline of July 14, 1995.

I have not received either an amended charge or a request for withdrawal. By letter dated July 14, 1995, you submitted additional argument urging that a complaint be issued in this matter. Your letter noted that there were no factual inaccuracies in my June 16, 1995 letter, and further stated that you did not wish to amend the charge.

Your letter cites two decisions in support of your belief that a complaint should issue in this matter. You rely on Oakland Unified School District (1983) PERB Dec. No. 326, and an Administrative Law Judge's Proposed Decision in Grenada Elementary School District (1984) 8 PERC 15133. Neither decision, however, supports the conclusion which you urge. In both cases, a party's failure to agree to more frequent meeting times was but one of the factors considered in finding that the respondent had engaged in surface bargaining. Even if the charging party's conduct here regarding meeting frequency is considered evidence of surface bargaining, that finding alone is not sufficient to find a prima facie violation based on the totality of conduct alleged by your charge. Therefore, I am dismissing the charge for the reasons set forth above, as well as the facts and reasons contained in my June 16, 1995 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

Les Chisholm
Regional Director

Attachment

cc: Robert Perko
Gary Messing

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916) 322-3198

June 16, 1995

Robert Perko, Division Leader, Staff Relations
Lawrence Livermore National Laboratory
7000 East Avenue, L-708
Livermore, CA 94550

Re: WARNING LETTER
Regents of the University of California (Lawrence Livermore National Laboratory) v. Protective Service Officers Association
Unfair Practice Charge No. SF-CO-43-H

Dear Mr. Perko:

The above-referenced charge was filed with the Public Employment Relations Board (PERB or Board) on May 10, 1995. In its charge, the Regents of the University of California, Lawrence Livermore National Laboratory (Employer) alleges that the Protective Service Officers Association (Association) has failed to bargain in good faith in violation of Government Code Section 3571.1 (c) by failing to meet at reasonable times and endeavor to reach agreement on matters within the scope of representation.

The Association was certified by PERB as the exclusive representative for a unit of Protective Service Officers (PSOs) on March 4, 1994. The Association and the Employer have not yet reached agreement on a memorandum of understanding.

The Association submitted its initial proposals, pursuant to Government Code Section 3595, on July 28, 1994. These proposals were publicly noticed on August 24, 1994. The Employer's initial proposals were publicly noticed on September 14, 1994. The first meeting between the parties was held on November 10, 1994 following a request by the Association made on November 1, 1994. At this first meeting, the parties met for just over four hours. No contract proposals were exchanged at the meeting, but the parties did reach agreement on ground rules for their negotiations.

At this first meeting the parties also discussed the Association's concerns regarding alleged unilateral changes made by the Employer, and the Association stated that it did not wish to schedule another meeting until it had received a written response to correspondence regarding those alleged changes.

The Employer sent its response on November 28, 1995. The Association next contacted the Employer on December 14, 1994, and

suggested that the parties not meet again until after the holidays, on January 5, 1995.

The January 5, 1995 meeting also lasted just over four hours. Again, no proposals were exchanged, and the meeting was devoted in large part to the discussion of alleged unilateral changes made by the Employer, including a change in staffing for the Superblock which was announced on that same date.

The parties next met on February 13, 1995, despite efforts by the Employer to schedule an earlier meeting. The February 13 session lasted just under four hours. The Association did present contract proposals at this meeting, but again discussion centered on alleged unilateral changes by the Employer.

The parties next met on March 9, 1995. That meeting lasted in excess of four hours. Both parties exchanged written proposals. However, the Association stated at the meeting that it would be "redoing" its proposals in response to the Employer's proposals. The Association's negotiator indicated that his vacation schedule would preclude further meetings until at least after April 10, 1995. The Employer agreed to contact the Association on April 10, 1995 to schedule another meeting, and advised the Association that it would submit the balance of its proposals by mail prior to the next meeting.

On April 18, the Employer submitted the balance of its proposals, but did not hear from the Association until April 28. The Employer again urged the Association to speed up the pace of negotiations and requested three bargaining sessions in May. The Association agreed to two dates, May 23 and 24, and those sessions were held.

The parties also met on June 8, and despite the Employer's request for the scheduling of two meetings per week, the parties have reached agreement only on the dates of June 22 and July 12 and 13.

Discussion

Government Code Section 3570 requires higher education employers to engage in meeting and conferring with an employee organization selected as exclusive representative of an appropriate unit on matters within the scope of representation, and an exclusive representative commits an unlawful practice, pursuant to Government Code Section 3571.1, when it refuses or fails to engage in meeting and conferring with the higher education employer.

The standard generally applied to determine whether good faith negotiations have occurred is called the "totality of conduct" test. This test reviews the entire course of conduct during negotiations to determine whether the parties have negotiated in good faith with the "requisite subjective intention of reaching an agreement." (Pajaro Valley Unified School District (1978) PERB Dec. No. 51.). There are also certain acts which have such a potential to frustrate negotiations that they are held unlawful without a determination of subjective good faith. For example, the insistence to impasse on a nonmandatory subject of bargaining constitutes a "per se" violation of the duty to bargain in good faith. (Lake Elsinore School District (1986) PERB Dec. No. 603.)

In Gonzales Union High School District Teachers Association. CTA/NEA (1985) PERB Dec. No. 480, the Board found violations based on an exclusive representative's refusal to meet with the Employer for more than a three month period, and by its refusal to bargain over certain mandatory subjects of bargaining. However, the Board rejected the Employer's argument that these factors in combination with other complained-of conduct evidenced the exclusive representative's failure to bargain with "requisite good faith." (Id.)

The Employer argues that the pace of negotiations here is inadequate because of the possible spending cuts which require decisions for which the parameters established by a collective bargaining agreement would be of assistance. Neither the statute nor PERB case law establishes a timeline for negotiations, and the pace of parties' efforts vary widely. The pace of an individual set of negotiations is influenced by many factors, including the conduct of both parties to the negotiations. (See, for example, the Board's discussion of the charging party's conduct in Gonzales. Likewise, here, it is noteworthy that the Employer did not complete its submission of proposals until April 18, 1995 while insisting that it was ready to bargain as early as September 1994.)

The Employer also references a "large number" of negotiable subjects that remain to be resolved, but fails to allege specifically what subjects have been covered in negotiations, on what subjects tentative agreements have been reached, and what subjects remain unsettled at the table.

The facts of this case, like those in Gonzales Union High School District Teachers Association. CTA/NEA, supra. and Professional Engineers in California Government (1991) PERB Dec. No. 900-S, fail to demonstrate that the Association's "totality of conduct" evidences the lack of a subjective intent to reach agreement.

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 June 26. 1995, I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198, extension 359.

Sincerely,

Les Chisholm
Regional Director

HLC:cb

cc: Gabriela B. Odell