

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



JOHN R. WOODS, et al.,)
)
Charging Parties,) Case No. LA-CE-449-H
)
v.) PERB Decision No. 1189-H
)
REGENTS OF THE UNIVERSITY OF)
CALIFORNIA,) March 19, 1997
)
Respondent.)
_____)

Appearances; University Professional and Technical Employees, CWA Local 9119, AFL-CIO by Cliff Fried for John R. Woods, et al.; Leslie L. Van Houten, Attorney, for Regents of the University of California.

Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (Board) on appeal from a Board agent's dismissal (attached) of an unfair practice charge. As amended, the charge alleged that the Regents of the University of California (University) violated unspecified sections of the Higher Education Employer-Employee Relations Act (HEERA)¹ when it served layoff notices on the Charging Parties without first providing them with notice and an opportunity to meet and discuss the decision to layoff and the effects thereof.²

¹HEERA is codified at Government Code section 3560 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

²Although the charge does not allege that the University's conduct violated any specific section of the HEERA, a refusal to meet and discuss with a non-exclusive representative is a potential violation of HEERA section 3571(a). (See Regents of

The Board has reviewed the entire record in this case, including the Charging Parties' original and amended unfair practice charge, the warning and dismissal letters, Charging Parties' appeal and the University's response thereto.³ The Board finds the warning and dismissal letters to be free from prejudicial error and adopts them as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. LA-CE-449-H is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Johnson joined in this Decision.

the University of California (1991) PERB Decision No. 891-H at proposed decision pp. 16-17 (noting that non-exclusive representative has no independent right to represent).) HEERA section 3571 provides, in part:

It shall be unlawful for the higher education employer to do any of the following:

(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.

³Charging Parties' appeal includes a number of supporting documents which were not part of the record before the Board agent. Because Charging Parties have not provided good cause why this evidence could not have been presented during the Board agent's investigation, the Board has not considered these documents in making its decision. (PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.; see PERB Reg. sec. 32635(b).)

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Blvd., Suite 650
Los Angeles, CA 90010-2334
(213) 736-3127



October 25, 1996

Cliff Fried, Vice-President
University Professional and
Technical Employees, CWA Local 9119
1015 Gayley Avenue, Suite 115
Los Angeles, California 90024

Re: DISMISSAL AND REFUSAL TO ISSUE COMPLAINT, Unfair Practice
Charge No. LA-CE-449-H, John R. Woods. Claudia L. Beard.
Gary C. Parham, Margaret Saunders and Penny L. Temple v.
Regents of the University of California

Dear Mr. Fried:

In the above-referenced charge, filed on March 26, 1996, and amended on April 15, 1996, Charging Parties allege that the University of California (University) laid them off without an opportunity to meet and discuss. This conduct is alleged to violate Government Code section 3571 of the Higher Education Employer-Employee Relations Act (HEERA).

I indicated to you, in my attached letter dated August 27, 1996, 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 September 6, 1996, the charge would be dismissed. I later extended that deadline.

On September 16, 1996, you filed an amended charge, adding the following allegation to the original charge:

By the above acts, and despite requests by the charging parties and their representative, the University has violated the Act by failing to meet its obligations to meet and discuss regarding the impact and effects of the layoffs on the charging parties and other employees. Those matters which the charging parties desire to address in meet and discuss sessions included, but are not limited to retraining of laid off employees; benefits for laid off employees; severance pay; recall and reemployment rights; options in lieu of layoffs; assignment of work among remaining employees, etc.

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Several documents are attached to the amended charge, but in none of those documents is there a request to meet and discuss the effects of Charging Parties' layoffs, nor is there a refusal by the University to meet and discuss those effects.

Both originally and as amended, the charge does not specifically allege that Charging Parties actually requested to meet and discuss the effects of their layoffs. On the contrary, the charge alleges that letters dated March 14 and 20, 1996, outlined Charging Parties' position on the layoffs. Those letters (attached to the original charge) protested the layoffs themselves but did not request to meet and discuss their effects. As noted in my letter of August 27, 1996, Charging Parties received notice on or about March 12, 1996, that they would be laid off effective April 10, 1996.

Based on the facts stated above, the amended charge still does not state a prima facie violation of HEERA, for the reasons that follow.

In Newman-Crows Landing Unified School District (19 82) PERB Decision No. 223, PERB held that there must be an actual request to negotiate the effects of a layoff, as distinct from a request to negotiate the layoff decision itself. In the present case it appears that, during the four weeks between the layoff notices and the actual layoffs, Charging Parties protested the layoff decisions but did not request to meet and discuss the effects. Furthermore, it does not appear from the charge that even in the six months since their layoffs Charging Parties have actually requested to meet and discuss the effects of their layoffs, or that the University has refused to meet and discuss those effects.

I am therefore dismissing the charge, based on the facts and reasons contained in this letter and my August 27 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:

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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
THOMAS J. ALLEN
Regional Attorney

Attachment

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Blvd., Suite 650
Los Angeles, CA 90010-2334
(213)736-3127



August 27, 1996

Cliff Fried, Vice-President
University Professional and
Technical Employees, CWA Local 9119
1015 Gayley Avenue, Suite 115
Los Angeles, California 90024

Re: WARNING LETTER, Unfair Practice Charge No. LA-CE-449-H,
John R. Woods, Claudia L. Beard, Gary C. Parham, Margaret
Saunders and Penny L. Temple v. Regents of the University of
California

Dear Mr. Fried:

In the above-referenced charge, filed on March 26, 1996, and amended on April 15, 1996, Charging Parties allege that the University of California (University) laid them off without an opportunity to meet and discuss. This conduct is alleged to violate Government Code section 3571 of the Higher Education Employer-Employee Relations Act (HEERA).

My investigation of the charge reveals the following.

Charging Parties were employed at the University's UCI Medical Center (UCIMC) in a unit for which there is no exclusive representative. On or about March 12, 1996, Charging Parties received letters from the University stating in part as follows:

It is with regret that I must inform you that your position will be subject to indefinite layoff, effective April 10, 1996. This action has become necessary due to the current fiscal situation at UCI Medical Center.

Charging Parties allege in part as follows:

UCIMC did not place before employees including myself any proposals to deal with their preceived [sic] financial problems. Under HEERA standing policy and case decisions prior to any change in my conditions of employment I have a right to Meet and Discuss in good faith with UCIMC on the issues. At no time was I presented UCIMC's plans and given time to contact my Union of choice, obtain relevant information and enter into a good faith meet and discuss

process. In fact I was handed a 30 day notice and was given no time to address the issues which brought about the action against me.

.

In summary this charge contends that UCIMC violated HEERA when it unilaterally changed the working conditions of the charging parties by not properly notifying [sic] me in advance of the actual reorganization plans for all of the effected [sic] departments including my own: Therefore interfering [sic] with my right to contact my union and set up the Meet and Discuss process prior to my actual layoff and the changes in the departments at UCIMC.

Based on the facts stated above, the charge does not state a prima facie violation of the HEERA, for the reasons that follow.

In Regents of the University of California v. Public Employment Relations Board (1985) 168 Cal.App.3d 937, 945, the court interpreted the right of nonexclusively-represented employees to be represented on employment matters as follows:

Under these practices [approved by the court], the University notifies individual employees of proposed changes in employment conditions and, if the employee chooses to have his or her union meet with the employer to discuss the changes, such meetings are held upon request.

HEERA section 3562(g)(1), however, states that the "scope of representation" for University employees "shall not include" the following:

Consideration of the merits, necessity, or organization of any service, activity, or program established by law or resolution of the regents or the directors, except for the terms and conditions of employment of employees who may be affected thereby.

Furthermore, in Newman-Crows Landing Unified School District (1982) PERB Decision No. 223, PERB held as follows:

The layoff of employees unquestionably impacts on their wages, hours, and other

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conditions of employment. It may concurrently impact upon those employees who remain. Nevertheless, the determination that there is insufficient work to justify the existing number of employees or sufficient [sic] funds to support the work force, is a matter of fundamental managerial concern which requires that such decisions be left to the employer's discretionary prerogative.

Although this holding was made under the Educational Employment Relations Act (EERA), there appears to be no reason to find a more limited employer prerogative under HEERA. It therefore appears that the reorganization and layoffs at UCIMC were outside the scope of representation and therefore outside the University's duty to meet and discuss.

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 September 6, 1996, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3542.

Sincerely,

Thomas J. Allen
Regional Attorney