STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, LOCAL 258,	)	
Charging Party,	)	Case No. SA-CE-1750
v.	)	PERB Decision No. 1190
ELK GROVE UNIFIED SCHOOL DISTRICT,	)	March 25, 1997
Respondent.	)	

Appearances; Jeannine Hartson, Business Agent, for American Federation of State, County and Municipal Employees, Local 258; Kronick, Moskovitz, Tiedemann & Girard by James Scot Yarnell, Attorney, for Elk Grove Unified School District.

Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION AND ORDER

CAFFREY, Chairman: This case is before the Public Employment Relations Board (Board) on appeal by the American Federation of State, County and Municipal Employees, Local 258 (AFSCME) of a Board agent's partial dismissal (attached) of AFSCME's unfair practice charge. The Board agent dismissed AFSCME's allegations that the Elk Grove Unified School District (District) violated the Educational Employment Relations Act (EERA)[1] by denying AFSCME access to bargaining unit members, interfering with AFSCME's ability to represent its membership and discriminating against an employee because of his exercise of protected activity.

[1]**EERA** is codified at Government Code section 3540 et seq.

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

The partial dismissal of the unfair practice charge in Case No. SA-CE-1750 is hereby AFFIRMED.

Members Johnson and Dyer joined in this Decision.

STATE OF CALIFORNIA PETE WILSON, *Governor*

PUBLIC EMPLOYMENT RELATIONS BOARD

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

January 8, 1997

Jeannine Hartson
Business Agent
American Federation of State,
County, and Municipal Employees
555 Capitol Mall, Suite 1225
Sacramento, CA 95814

Re: Unfair Practice Charge No. S-CE-1750
American Federation of State, County, and Municipal Employees, Local 258 v. Elk Grove Unified School District
PARTIAL DISMISSAL LETTER

Dear Ms. Hartson:

I indicated to you, in my attached letter dated December 11, 1996, that certain allegations contained in the 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 these allegations to state a prima facie case or withdrew them prior to December 19, 1996, the allegations would be dismissed.

On December 20, 1996, Mr. Jerry Marois called on your behalf to request an extension of time. Because you were on vacation when my attached letter arrived, I extended your time to respond until December 27, 1996. On December 26, 1996, I received an amended charge. That charge asserts that Mr. Marois was American Federation of State, County, and Municipal Employees, Local 258's (Federation) "business agent" when the District placed him on administrative leave pending investigation of the sexual harassment complaint. As I stated in my December 11, 1996 letter, however, a school district may restrict an employee organization's access through reasonable regulation. (Long Beach Unified School District (1980) PERB Decision No. 130 at 4.) Although the charge asserts that the administrative leave prevented Mr. Marois from performing the duties of business agent, it does not indicate that the administrative leave interfered with Federation job stewards or employees' ability to perform these duties. Therefore, the amended charge fails to state a prima facie case for denial of access.

The amended charge also asserts that the Elk Grove Unified School District (District) interfered with union members rights when it interviewed union board members regarding statements made by Mr. Marois during union meetings. As I indicated in my December 11, 1996 letter, because the amended charge does not indicate that

the interviews concerned any Federation business, it does not allege facts sufficient to state a prima facie charge of interference. (See Clovis Unified School District (1980) PERB Decision No. 389 at 15-16.)

Based on the facts and reasons contained in both this letter and in my December 11, 1996 letter, I am dismissing the allegations concerning denial of access, discrimination, and interference.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, you may obtain a review of this dismissal of certain allegations contained in 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,

Charles Sakai
Board Agent

Attachment

cc: James Scot Yarnell
Kronick, Moskovitz, Tiedemann & Girard
400 Capitol Mall, 27th Floor
Sacramento, CA 95814-4417

STATE OF CALIFORNIA PETE WILSON, *Governor*

PUBLIC EMPLOYMENT RELATIONS BOARD

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

December 11, 1996

Jeannine Hartson
Business Agent
American Federation of State,
County, and Municipal Employees
555 Capitol Mall, Suite 1225
Sacramento, CA 95814

Re: Unfair Practice Charge No. S-CE-1750
American Federation of State, County, and Municipal Employees, Local 258 v. Elk Grove Unified School District
PARTIAL WARNING LETTER

Dear Ms. Hartson:

In the above-referenced charge, the American Federation of State, County, and Municipal Employees, Local 258 (Federation) alleges that the Elk Grove Community College District (District) violated sections 3543, 3543.1(b), and 3543.5(a) and (b) of the Educational Employment Relations Act (EERA) during its investigation of alleged sexual harassment by Jerry Marois (Marois). My investigation revealed the following information:

On or about July 11, 1996, Jim Strumpfer (Strumpfer), Director of Purchasing for the District, filed a complaint of sexual harassment against Marois, Strumpfer's subordinate and the Federation's local chapter president. On that date, the District interviewed Marois and placed him on administrative leave pending an investigation of the sexual harassment complaint.

As part of its investigation of the sexual harassment complaint, the District interviewed a number of Federation members and officers. These interviews took place between July 11, 1996 and July 26, 1996. During these interviews, the District asked questions regarding statements that Marois had allegedly made during union meetings.

The charge raises a number of potential violations of the EERA. First, an employee has a right to representation during an investigatory interview which the employee reasonably believes may lead to discipline. Second, the charge alleges that, when the District placed Marois on administrative leave, it denied the Federation access to unit members. Third, the charge alleges that the District's investigation into statements made during union meetings interfered with the Federation's ability to represent its membership. Finally, the charge alleges that the District discriminated against Marois because of his exercise of protected activity.

The foregoing facts fail to state a prima facie violation of the EERA for the reasons that follow.

Under EERA, an employee is entitled to representation during an employer's investigatory interview if the employee reasonably believes that the interview may lead to discipline. (Barstow Unified School District (1996) PERB Decision No. 1164 at proposed decision 17.) In order to exercise that right, however, the employee must request such representation. (See Regents of the University of California (1983) PERB decision No. 310-H, proposed Decision at 31) The charge does not allege that Marois made any such request. Accordingly, the charge fails to state a prima facie case for violation of Marois' right to representation.

EERA section 3543.1(b) guarantees employee organizations reasonable access to areas in which employees work. (See Woodland Joint Unified School District (1987) PERB Decision No. 628 at 3 (noting that District's discriminatory denial of access constituted interference but not unilateral change).) That access, however, may be limited by reasonable regulations. (Long Beach Unified School District (1980) PERB Decision No. 130 at 4.) Your charge asserts that the District has denied Mr. Marois access to Federation membership but fails to allege any details regarding this alleged denial of access. Further, it is not clear from the charge that the District's actions interfered with the Federation's right of access to its membership through union stewards or Federation employees. In order to demonstrate that the District has denied the Federation its statutory right to access, you must allege that the District has imposed objectively unreasonable restrictions on the Federation's right of access. (Ibid; see PERB Regs. §32615(a)(5) (noting that charge must state with specificity the conduct alleged to violate the EERA).) Accordingly, the charge, as currently written, fails to state a prima facie case of denial of access.

In order to demonstrate an interference violation, a charging party must show that the employer's conduct tends to or does result in some harm to employee rights. (Carlsbad Unified School District (1979) PERB Decision No. 89 at 10.) The Charge alleges that the District interviewed a number of Federation members and officers regarding statements that Marois purportedly made while conducting Federation business. The Charge does not indicate the nature of the District's questions, however. It appears that the interviews concerned statements constituting potential sexual harassment that were made during Federation meetings, rather than any Federation business. Accordingly, the Federation has failed to demonstrate that the District's investigation was the sort that causes or tends to cause harm to the protected rights of

Federation members. (See Clovis Unified School District (1989) PERB Decision No. 389 at 15-16.)

A prima facie showing of retaliation or discrimination has the following elements: (1) the employee exercised rights under the EERA; (2) the employer had knowledge of the exercise of those rights; and (3) the employer imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained or coerced the employees because of the exercise of those rights. (Novato Unified School District (1982) PERB Decision No. 210 at 5.) Although the charge alleges that the District was aware of Marois' protected activity, it fails to allege facts which show that the District undertook its investigation of Marois in response to that protected activity. Accordingly, the charge fails to state a cause of action for discrimination as well.

For these reasons the allegations that the District unlawfully denied the Federation access to its membership and interfered with employee rights by interviewing union members and officers, as presently written, do 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 December 19, 1996, I shall dismiss the above-described allegations from your charge. If you have any questions, please call me at (916) 322-3198.

Sincerely,
Charles Sakai
Board Agent