

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



FEDERATED UNIVERSITY POLICE OFFICERS ASSOCIATION,)	
)	
Charging Party,)	Case No. SA-CE-101-H
)	
v.)	PERB Decision No. 1271-H
)	
REGENTS OF THE UNIVERSITY OF CALIFORNIA,)	June 30, 1998
)	
Respondent.)	
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Appearances: Mastagni, Holstedt & Chiurazzi by Curtis S. Leavitt, Attorney, for Federated University Police Officers Association; Edward M. Opton, Jr., University Counsel, for Regents of the University of California.

Before Caffrey, Chairman; Johnson and Jackson, Members.

DECISION

JACKSON, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Federated University Police Officers Association (FUPOA) of a Board agent's partial dismissal (attached) of its unfair practice charge. FUPOA alleges that the Regents of the University of California (University) violated the Higher Education Employer-Employee Relations Act (HEERA) section 3571(a), (b) and (c)¹ by altering

¹HEERA is codified at Government Code section 3560 et seq. Section 3571 provides, in pertinent 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

general work orders of University police officers without having negotiated with FUPOA prior to the change.

FUPOA claims that on July 18, 1997, the University of California, Los Angeles and University of California, Irvine altered their General Orders when they issued a listing of "prohibited activities" allegedly limiting outside employment of the police officers represented by FUPOA. FUPOA claims that this is a unilateral change in University policy.

We agree with the Board agent that FUPOA has failed to allege a prima facie case of a violation, and find further that FUPOA's appeal of the Board agent's dismissal fails to comport with the requirements of PERB Regulation 32635.² In its appeal, FUPOA makes new allegations and presents new evidence not previously offered, without any showing of good cause. Accordingly, the new allegations and evidence have not been

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 engage in meeting and conferring with an exclusive representative.

²PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The Board notes that PERB Regulation section 32635(b) states:

Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence.

considered by the Board. (Santa Clarita Community College District (1996) PERB Decision No. 1178.) As the University points out in its opposition to FUPOA's appeal, FUPOA should have amended its charge and presented any new charges it now makes or any new evidence to the Board agent.

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

ORDER

The partial dismissal of the unfair practice charge in Case No. SA-CE-101-H is hereby AFFIRMED.

Chairman Caffrey and Member Johnson joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



March 31, 1998

Curtis S. Leavitt, Esquire
Mastagni, Holstedt & Chiurazzi
1912 I Street
Sacramento, California 95814

Re: Federated University Police Officers Association v.
Regents of the University of California
Unfair Practice Charge No. SA-CE-101-H
PARTIAL DISMISSAL LETTER

Dear Mr. Leavitt:

On January 20, 1998, you filed the above-captioned unfair practice charge on behalf of Federated University Police Officers Association (FUPOA). The charge alleges that the Regents of the University of California (UC), specifically at the Los Angeles (UCLA) and Irvine campuses, violated sections 3571(a), (b) and (c) of the Higher Education Employer-Employee Relations Act (HEERA) when they altered general work orders of police officers at those campuses without having negotiated with the exclusive representative, FUPOA, prior to its implementation of the new policies. More specifically, UCLA allegedly altered its General Order 15 on July 18, 1997, when it limited the types of outside employment its police officers could perform. Likewise at Irvine, UC altered its General Order 46, similarly limiting outside employment for police officers employed at that campus.

I indicated to you, in my attached letter dated March 16, 1998, 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 March 24, 1998, the allegations would be dismissed.

You were granted an extension of time until March 30, 1998, to amend this charge. I have not received either an amended charge or a request for withdrawal. Therefore, I am dismissing those allegations which fail to state a prima facie case based on the facts and reasons contained in my March 16, 1998, letter.

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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.)

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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

Roger Smith
Board Agent

Attachment

cc: Edward M. Opton Jr.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



Curtis S. Leavitt, Esquire
Federated University Police Officers Association
1912 I Street
Sacramento, California 95814

Re: Federated University Police Officers Association v. Regents
of the University of California
Unfair Practice Charge No. SA-CE-101-H
PARTIAL WARNING LETTER

Dear Mr. Leavitt:

On January 20, 1998, you filed the above-captioned unfair practice charge on behalf of Federated University Police Officers Association (FUPOA). The charge alleges that the Regents of the University of California (UC), specifically at the Los Angeles (UCLA) and Irvine campuses, violated sections 3571(a), (b) and (c) of the Higher Education Employer-Employee Relations Act (HEERA) when they altered general work orders of police officers at those campuses without having negotiated with the exclusive representative, FUPOA, prior to its implementation of the new policies. More specifically, UCLA allegedly altered its General Order 15 on July 18, 1997, when it limited the types of outside employment its police officers could perform. Likewise at Irvine, UC altered its General Order 46, similarly limiting outside employment for police officers employed at that campus.

FUPOA asserts that it did not receive notice of either of these changes in General Orders until late August 1997. FUPOA and UC while in the course of negotiating its first agreement, negotiated an interim Rights Agreement which was initialed on April 3, 1997 and provides:

The University shall have the right to plan, direct, manage and control the use of resources and personnel to achieve the University's missions, programs, objectives, activities and priorities; . . . to implement, continue, modify, change, or discontinue any policies, practices, rules or regulations including but not limited to . . . the campus general orders, the departmental policies and procedures, department orders, work rules (emphasis added)

This agreement also provides that UC should provide notice to FUPOA, where possible, of an intent to change policies with at least thirty (30) calendar days notice, so that FUPOA could request a meet and discuss opportunity.

In determining whether a party has violated HEERA section 3571(c), PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. (Stockton Unified School District (1980) PERB Decision No. 143.) Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented before the employer notified the exclusive representative and gave it an opportunity to request negotiations. (Walnut Valley Unified School District (1981) PERB Decision No. 160; Grant Joint Unified High School District (1982) PERB Decision No. 196.)

In Mammoth Unified School District (1983) PERB Decision No. 371, PERB held that a general management-rights clause allowed the employer's unilateral imposition of a short disciplinary suspension despite the fact the subject matter was never specifically contemplated or negotiated. In the instant case, FUPOA authorized UC to change campus general orders so long as it was notified and given the opportunity to discuss the changes.

FUPOA has argued that as a result of these and other changes UC implemented on unit members, you effectively rescinded the Rights Agreement of April 3, 1997, through an October 14, 1997 letter to Jim Phillips, the labor relations director for UC.

You have provided no authority for me to find that the April 3, 1997 agreement is no longer in effect. The agreement contains language that it shall remain in effect for the "duration of the negotiations process and until the completion of the HEERA process to establish wages, hours and working conditions for this bargaining unit."

Based on my investigation, you have not established a case of unilateral change regarding the employer's decision to change the Campus General Orders. The employer is permitted under the Rights Agreement to change the General Orders. Failure to provide notice and an opportunity to consult is a separate allegation.

For these reasons the allegation that UC unilaterally implemented a new policy relevant to outside employment for police officers, at UC Irvine and UCLA 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

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from you before March 24, 1998, I shall dismiss the above-described allegation from your charge. If you have any questions, please call me at (916) 322-3198 ext. 358.

Sincerely,

Roger Smith
Board Agent