STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ADRIAN PETER MAASKANT,	)	
	)	
Charging Party,	)	Case No. LA-CE-3911
	)	
v.	)	PERB Decision No. 1294
	)	
KERN HIGH SCHOOL DISTRICT,	)	October 22, 1998
	)	
Respondent.	)	
	)	

Appearances: Adrian Peter Maaskant, on his own behalf; Schools Legal Service by Carl B. A. Lange, III, Director of Labor Relations, for Kern High School District.

Before Caffrey, Chairman; Amador and Jackson, Members.

DECISION

JACKSON, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Adrian Peter Maaskant (Maaskant) of a Board agent's partial dismissal (attached) of his unfair practice charge. As amended, Maaskant's charge alleges that the Kern High School District (District) violated the Educational Employment Relations Act (EERA), sections 3540.1 (i) (1)[1] and 3543.5 (c)[2] when it refused to allow

[1]**EERA** is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3540.1 provides, in pertinent part:

> (i) "Organizational security" means either of the following:
>
> (1) An arrangement pursuant to which a public school employee may decide whether or not to join an employee organization, but which requires him or her, as a condition of continued employment, if he or she does join, to maintain his or her membership in good

Maaskant to withdraw from a maintenance of membership provision.

The Board has reviewed the entire record in this case, including the unfair practice charge, the partial warning and dismissal letters, Maaskant's appeal and the District's response. The Board finds the partial warning and dismissal letters to be free from prejudicial error and adopts them as the decision of the Board itself.[3]

Further, the Board notes that the Board agent issued a complaint alleging that the District's conduct unlawfully interfered with Maaskant's EERA protected rights. The District's motion to dismiss the complaint issued on July 22, 1998 by the

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> standing for the duration of the written agreement. However, no such arrangement shall deprive the employee of the right to terminate his or her obligation to the employee organization within a period of 30 days following the expiration of a written agreement.

[2]Section 3543.5 provides, in pertinent part:

> It shall be unlawful for a public school employer to do any of the following:
>
> (c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

[3]The Board did not consider the late-filed materials submitted to PERB on September 10, 1998, including the new evidence submitted therewith, as Maaskant failed to show good cause for his late filing (PERB regs. are codified at Cal. Code Regs. tit. 8, sec. 31001 et seq.; see PERB Regs. 32635(b) and 32136).

General Counsel's Office is inappropriately made before the Board at this time and is denied.[4]

ORDER

The partial dismissal of the unfair practice charge in Case No. LA-CE-3911 is hereby AFFIRMED.

Chairman Caffrey and Member Amador joined in this Decision.

[4]PERB Regulation 32640(c) provides:

> (c) The decision of a Board agent to issue a complaint is not appealable to the Board itself except in accordance with Section 32200.

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 439-6940

July 22, 1998

Adrian Peter Maaskant

Re: **PARTIAL DISMISSAL LETTER**
Adrian Peter Maaskant v. Kern High School District
Unfair Practice Charge No. LA-CE-3911

Dear Mr. Maaskant:

The above-referenced unfair practice charge, filed March 11, 1998, alleges the Kern High School District (District) refused to allow Adrian Peter Maaskant to withdraw from a maintenance of membership provision. This conduct is alleged to violate Government Code section 3540.1(i)(l) and 3543.5(c) of the Educational Employment Relations Act (EERA or Act) .

I indicated to you, in my attached letter dated April 7, 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 April 14, 1998, the allegations would be dismissed. I later extended this deadline until April 22, 1998.

On April 22, 1998, I received a first amended charge. The amended charge adds the following facts. Charging Party states that in a conversation with Tom Goode, District Director of Personnel, Mr. Goode stated that the Association "did not trust" Charging Party and therefore would not allow the District to stop the payroll deductions.

Based on the above stated facts, the allegations that the District violated Government Code section 3540.1 and that the District unilaterally changed Article 5, Section D of the Agreement, fail to state prima facie violations of the EERA, and must therefore be dismissed.

Charging Party alleges the District, with support of the Association, violated Government Code section 3540.1(i)(1) by

"conspiring to rewrite Government Code section 3540.1(i) (1). Government Code section 3540.1(i)(1) states in its entirety:

> An arrangement pursuant to which a public school employee may decide whether or not to join an employee organization, but which requires him or her, as a condition of continued employment, if he or she does join, to maintain his or her membership in good standing for the duration of the written agreement. However, no such arrangement shall deprive the employee of the right to terminate his or her obligation to the employee organization within a period of 30 days following the expiration of a written agreement. (emphasis added.)

As noted in my April 7, 1998, letter, the alleged violation of 3540.1, however, fails to state a prima facie case. Article V, Section D of the parties Agreement states employees may discontinue their dues deduction to the Association thirty days prior to the expiration of the Agreement. Reading the Government Code and contract provisions together, it seems the District and Association have enlarged the period of time during which an employee may discontinue membership. Instead of the statutorily mandated thirty days following the expiration of the contract, an employee also has thirty days prior to the expiration of the contract to discontinue membership. Moreover, Charging Party did not request a discontinuation of dues deduction within the 30 days period following the expiration of the Agreement. As such, the facts provided do not demonstrate the District violated Government Code section 3540.1 (i) (1) .

Charging Party also argues the District violated Article V, Section D of the parties contract by denying Charging Party's June 4, 1997, request to discontinue membership. Although PERB lacks the authority to enforce collective bargaining agreements (Govt. Code sec. 3541.5(b)), such an allegation may be examined under the theory of unilateral change. However, as noted in my April 7, 1998, letter, Charging Party lacks standing to assert unilateral change violation, and as such, the charge fails to state a prima facie case. (Oxnard School District (1988) PERB Decision No. 667.)

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,

ROBERT THOMPSON
Deputy General Counsel

By
Kristin L. Rosi
Regional Attorney

Attachment

cc: Carl A. Lange, Esq.

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 439-6940

April 7, 1998

Adrian Peter Maaskant

Re: **PARTIAL WARNING LETTER**
Adrian Peter Maaskant v. Kern High School District
Unfair Practice Charge No. LA-CE-3911

Dear Mr. Maaskant:

The above-referenced unfair practice charge, filed March 11, 1998, alleges the Kern High School District (District) refused to allow Adrian Peter Maaskant to withdraw from a maintenance of membership provision. This conduct is alleged to violate Government Code section 3540.1(i)(l) and 3543.5(c) of the Educational Employment Relations Act (EERA or Act) .

Investigation of the charge revealed the following. Mr. Maaskant is employed by the District as a Teacher at Vista East High School, and is exclusively represented by the Kern High School Faculty Association, CTA/NEA (Association). The District and the Association were parties to a collective bargaining agreement (Agreement) which expired on June 30, 1997. The parties have since signed a extension to the Agreement.

With regard to maintenance of membership in the Association, the Agreement states in pertinent part at Article V:

> D. Commencing upon ratification of this Agreement and terminating 3 0 days prior to the expiration of this Agreement, any employee who is a member or who becomes a member of the Association shall be required to maintain membership in the Association for the term of the Agreement.
>
> 2. Except as set forth in paragraph D of this Article, the District shall not process requests for withdrawal of membership deductions authorizations.

The Dues Deduction Authorization form signed by District employees states in relevant part:

> This authorization is to remain in force from year to year until revoked or revised by me in writing.

On June 4, 199 7, Mr. Maaskant requested, pursuant to Article V, Section D, that the District cease payroll deductions to the Association. This request was denied by District representative, Norma Pierucci. Subsequently, Director of Personnel, Tom Goode, informed Charging Party that as negotiations for a contract extension were underway, Charging Party could discontinue his payroll withholdings thirty days prior to the ratification of the contract extension.

On September 15, 1997, Charging Party received notification from the Association that contract negotiations had been successful, and that a ratification vote would take place on September 24, 1997. On the afternoon of September 29, 1997, Charging Party again requested the District discontinue payroll deductions to the Association. The District denied this request as well, as the District's Board of Trustees had met that morning to ratify the extension.[1]

Based on the above stated facts, the charge as presently written fails to state a prima facie violation of the EERA, for the reasons stated below.

Charging Party alleges the District, with support of the Association, violated Government Code section 3540.1(i)(1) by "conspiring to rewrite Government Code section 3540.1 (i) (1). Government Code section 3540.1 (i) (1) states in its entirety:

> An arrangement pursuant to which a public school employee may decide whether or not to join an employee organization, but which requires him or her, as a condition of continued employment, if he or she does join, to maintain his or her membership in good standing for the duration of the written agreement. However, no such arrangement shall deprive the employee of the right to terminate his or her obligation to the employee organization within a period of 30 days <u>following</u> the expiration of a written agreement. (emphasis added.)

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[1] Charging Party's second request for discontinuation was thus made during the term of an effective agreement.

The allegation, however, fails to state a prima facie case. Article V, Section D of the parties Agreement states employees may discontinue their dues deduction to the Association thirty days prior to the expiration of the Agreement. Reading the Government Code and contract provisions together, it seems the District and Association have enlarged the period of time during which an employee may discontinue membership. Instead of the statutorily mandated thirty days following the expiration of the contract, an employee may actually have thirty days prior to and following the expiration of the contract to discontinue membership. Moreover, Charging Party did not request a discontinuation of dues deduction within the 30 days period following the expiration of the Agreement. As such, the facts provided do not demonstrate the District violated Government Code section 3540.1(i)(1).

Charging Party also argues the District violated Article V, Section D of the parties contract by denying Charging Party's June 4, 1997, request to discontinue membership. Although PERB lacks the authority to enforce collective bargaining agreements (Govt. Code sec. 3541.5(b)), such an allegation may be examined under the theory of unilateral change. However, Charging Party lacks standing to assert unilateral change violations, and as such, the charge fails to state a prima facie case. (Oxnard School District (1988) PERB Decision No. 667.) Moreover, a unilateral change involving a single error that the employer stands ready to correct is note a refusal to negotiate in bad faith. (California State University (1990) PERB Decision No. 799-H.) As my investigation revealed the District willingness to correct its error, such conduct fails to demonstrate a prima facie violation.

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 April 14, 1998. I shall dismiss your charge. If you have any questions, please call me at (415) 439-6940.

Sincerely,

Kristin L. Rosi
Regional Attorney