

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION,)	
)	
Charging Party,)	Case No. LA-CE-3993
)	
v.)	PERB Decision No. 1320
)	
OCEAN VIEW SCHOOL DISTRICT,)	March 22, 1999
)	
Respondent.)	

Appearances: Susan E. Ross, Labor Relations Representative, for California School Employees Association; Miller, Brown & Dannis by Joan Birdt, Attorney, for Ocean View School District.

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (PERB or Board) on the California School Employees Association's (Association) appeal from a Board agent's partial dismissal (attached) of its unfair practice charge. As amended, the relevant portion of the charge alleges that the Ocean View School District (District) violated section 3543.5(a), (b), and (c) of the Educational Employment Relations Act (EERA)¹

¹EERA is codified at Government Code section 3540 et seq. Section 3543.5 provides, in relevant part:

It shall be unlawful for a public school 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

when it unilaterally transferred bargaining unit work to a company known as Wright Transportation.²

The Board has reviewed the entire record in this case, including the original and amended unfair practice charge, the warning and dismissal letters, the Association's appeal, and the District's response thereto. 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 partial dismissal of the unfair practice charge in Case No. LA-CE-3993 is hereby AFFIRMED.

Chairman Caffrey and Member Amador joined in this Decision.

applicant for employment or reemployment.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

²On January 6, 1999, the Board agent issued a complaint alleging that the District had violated EERA section 3543.5(a), (b), and (c) when it refused to provide the Association with information relevant and necessary to its representational duties.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



January 6, 1999

Susan E. Ross, LRR
California School Employees Association
32 6 West Katella Avenue, Suite E
Orange, CA 92867

Re: **PARTIAL DISMISSAL LETTER**
California School Employees Association v. Ocean View School
District
Unfair Practice Charge No. LA-CE-3993

Dear Ms. Ross:

The above-referenced unfair practice charge, filed October 8, 1998, alleges the Ocean View School District (District) unilaterally contracted out bargaining unit services and refused to provide information to an exclusive representative. The California School Employees Association (CSEA) alleges this conduct violates Government Code section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA or Act).

I indicated to you, in my attached letter dated December 14, 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 December 23, 1998, the allegations would be dismissed. On December 23, 1998, Charging Party filed a first amended charge.

The first amended charge reiterates CSEA's position that the District's action in allowing "parent volunteers" to drive privately owned school buses on school sponsored field trips constitutes a transfer of bargaining unit work, and not subcontracting out. Specifically, the amended charge adds:

Charging Party asserts as a factual matter that this work was performed by parent volunteers, based upon the following: a. the individuals driving the buses unlawfully on the dates in question were parents of students and not employees of Wright Transportation; and, b. that for the work

dates in dispute, there exists no record of payment to Wright Transportation for contracted transportation services. . . . Therefore, the weight of existing evidence establishes that the work was performed by parent volunteers rather than by the employees of an independent contractor.

The above-quoted statement is the only additional factual information provided by Charging Party. Based on the above-stated facts, and those provided in the original charge, the allegation still fails to state a prima facie case for the reasons provided below.

As noted in my December 14, 1998, letter, the removal of work from a bargaining unit, either by transferring the work to other District employees outside the unit, or by contracting out the work to nonemployees, has been the subject of numerous charges before PERB. However, despite their similarities, the transfer of bargaining unit work and the subcontracting of work are treated differently under the EERA.

CSEA contends the District's action constitutes the transfer of bargaining unit work to "parent volunteers" outside the unit. In order to demonstrate a transfer of bargaining unit work to other employees, CSEA must show that the parent volunteers were employees of the District. (Rialto Unified School District (1982) PERB Decision No. 209.) However, the charge fails to demonstrate the individuals who drove the buses owned by Wright Transportation are "employees" of the District. While CSEA contends that these parent drivers are "volunteers" such a fact does not render these parents employees of the District.¹ Facts provided demonstrate that Wright Transportation is an independent company which employs parents to drive school buses. The buses used are owned by Wright Transportation, not the District, and the drivers are not trained by the District or supervised by District employees. Instead, the drivers, whether volunteers or not, operated buses owned by Wright Transportation and were supervised by employees of Wright Transportation. Nothing in either the original or amended charge indicates the parent volunteers were employees of the District. As such, the charge fails to demonstrate a transfer of bargaining unit work.

Instead, as noted in my December 14, 1998, letter, facts provided demonstrate the District contracted out bargaining unit work to Wright Transportation who used parent volunteers to operate the

¹ See, Lincoln Unified School District (1984) PERB Decision No. 465.

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buses. For the reasons noted in my December 14, 1998, letter, the contracting out of services, in this instance, does not violate the EERA. (See, Barstow Unified School District (1997) PERB Decision No. 1138b.) Indeed, CSEA itself in its July 23, 1998, letter to the District, notes that contracting out is allowed under the collective bargaining agreement. As such, this allegation must be dismissed.

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

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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: Joan Birdt

PUBLIC EMPLOYMENT RELATIONS BOARD



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



December 14, 1998

Susan E. Ross, LRR
California School Employees Association
32 6 West Katella Avenue, Suite E
Orange, CA 92867

Re: **PARTIAL WARNING LETTER**
California School Employees Association v. Ocean View School
District
Unfair Practice Charge No. LA-CE-3993

Dear Ms. Ross:

The above-referenced unfair practice charge, filed October 8, 1998, alleges the Ocean View School District (District) unilaterally contracted out bargaining unit services and refused to provide information to an exclusive representative. The California School Employees Association (CSEA) alleges this conduct violates Government Code section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA or Act).

Investigation of the charge revealed the following. CSEA is the exclusive representative of the District's classified bargaining unit, which includes bus drivers. CSEA and the District are parties to a collective bargaining agreement (Agreement) which expired on June 30, 1998. Article 2 of the Agreement states in relevant part:

It is understood and agreed that the District retains all of its powers and authority to direct, manage and control to the full extend of the law. Included but not limited to those duties and powers are the exclusive right to: . . . contract out work according

to-law; On April 28, 1998, the District contracted out a field trip to Wright Transportation, a transportation company owned by parents of an Golden View School student. On this field trip, one District bus and driver transported children to the Santa Ana Zoo, while another bus owned by Wright Transportation and another driver, employed by Wright, transported the remaining students to the Zoo.

On April 30, 1998, CSEA representative Susan Ross noticed the District that CSEA considered the use of parent volunteers to constitute a transfer of bargaining unit work, and not contracting out. Ms. Ross cited no precedent for this proposition, and the District disagreed with Ms. Ross' conclusion.

On May 7, 1998, Ms. Ross learned that two additional field trips had been driven by employees of Wright Transportation. This work was customarily assigned to District bus drivers. Ms. Ross verbally notified Assistant Superintendent John Tennant of the additional trip³ and again requested the District cease and desist this contracting out of bus driver services.

On June 3, 1998, having not heard back from the District, Ms. Ross again requested the District cease and desist from contracting out these services. On June 17, 1998, Mr. Tennant responded to Ms. Ross' letter by outlining the District's position. Mr. Tennant stated the District considered the hiring of Wright Transportation to be lawful contracting out of services under the Agreement and Education Code section 38020. Mr. Tennant also cited California School Employees Association v. Barstow Unified School District (1997) PERB Decision No. 1138b, for the proposition that CSEA's agreement to contractual language allowing for "contracting out work according to law" served as a waiver of CSEA's right to negotiate this decision.

On July 23, 1998, Ms. Ross sent a third letter to the District requesting the District cease and desist from contracting out services to Wright Transportation. Ms. Ross also stated CSEA's position that the District's action constituted the transfer of bargaining unit work and not the contracting out of services.

Based on the above stated facts, the charge as presently written fails to demonstrate the District unilaterally transferred bargaining unit work, for the reasons provided below.

The removal of work from a bargaining unit, either by transferring the work to other District employees outside the unit, or by contracting out the work to nonemployees, has been the subject of numerous charges before PERB. However, despite their similarities, the transfer of bargaining unit work and the subcontracting of work are treated differently under the EERA.

CSEA contends the District's action constitutes the transfer of bargaining unit work to other employees outside the unit. In order to demonstrate a transfer of bargaining unit work to other employees, CSEA must show that the drivers at Wright Transportation were employees of the District. (Rialto Unified School District (1982) PERB Decision No. 209.) However, the

charge fails to demonstrate the individuals employed by Wright Transportation are "employees" of the District. While CSEA contends that these parent drivers are "volunteers" such a fact does not render these parents employees of the District.¹ Facts provided demonstrate that Wright Transportation is an independent company which employs parents to drive school buses. The buses used are owned by Wright Transportation, not the District, and the drivers are not trained by the District or supervised by District employees. Instead, the drivers, whether volunteers or not, are employed by Wright Transportation and supervised by employees of Wright Transportation. As such, the charge fails to demonstrate a transfer of bargaining unit work.

Instead, facts provided demonstrate the District contracted out bargaining unit work to Wright Transportation.² While the contracting out of bargaining unit work may be at times unlawful, such is not the case herein. In the instant charge, facts provided demonstrate the parties' Agreement includes a management rights clause allowing for the contracting out of bargaining unit work where lawful.

In Barstow, supra. the Board held that under Education Code section 39800 (now section 38020) a merit district may lawfully contract out transportation services, subject to its good faith bargaining obligation under the EERA. PERB also found that the obligation was fulfilled under a management rights clause allowing the district to "contract out work, which may be lawfully contracted for." The Board noted that such language constituted a clear and unmistakable waiver by CSEA of its right to bargain over the subcontracting of transportation services.

Facts provided herein are nearly identical to those presented in Barstow. CSEA and the District agreed to a management rights clause allowing for the contracting out of transportation services and the District acted under this authority. As such, this allegation fails to state a prima facie violation of the EERA.

For these reasons the allegation that transferred bargaining unit work, 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

¹ See, Lincoln Unified School District (1984) PERB Decision No. 465.

² It should also be noted that CSEA considered this issue to be one of contracting out bargaining unit services in its June 3, 1998, letter to Mr. Tennant.

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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 have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative 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 23, 1998. I shall dismiss the above-described allegation from your charge. If you have any questions, please call me at (415) 439-6940.

Sincerely,

Kristin L. Rosi
Regional Attorney