

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SOUTH TAHOE EDUCATORS ASSOCIATION,)
CTA/NEA,)
Charging Party,) Case No. SA-CE-1896
v.) PERB Decision No. 1361
LAKE TAHOE UNIFIED SCHOOL DISTRICT,) December 1, 1999
Respondent.)

Appearances; California Teachers Association by Ramon E. Romero, Attorney, for South Tahoe Educators Association, CTA/NEA; Girard & Vinson by Allen R. Vinson, Attorney, for Lake Tahoe Unified School District.

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

CAFFREY, Chairman: This case is before the Public Employment Relations Board (Board) on appeal by the South Tahoe Educators Association, CTA/NEA (Association) of a Board agent's partial dismissal (attached) of the Association's unfair practice charge. In the charge the Association alleged that the Lake Tahoe Unified School District (District) violated section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA)¹ when it engaged in surveillance of the Association's

¹EERA is codified at Government Code section 3540 et seq. Section 3543.5 states, in pertinent 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

executive board meetings and refused to provide requested information.

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

ORDER

The partial dismissal of the unfair practice charge in Case No. SA-CE-1896 is AFFIRMED.

Members Dyer and Amador joined in this Decision.

employees because of their exercise of rights 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 meet and negotiate in good faith with an exclusive representative.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



August 2, 1999

Ramon E. Romero
California Teachers Association
P.O. Box 921
Burlingame, CA 94011-0921

Re: South Tahoe Educators Association, CTA/NEA v. Lake Tahoe Unified School District
Unfair Practice Charge No. SA-CE-1896
PARTIAL DISMISSAL LETTER

Dear Mr. Romero:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board on April 14, 1999. The charge alleges that the Lake Tahoe Unified School District violated the Educational Employment Relations Act (EERA), Government Code section 3543.5(a), (b) and (c), when it interfered with the protected rights of the South Tahoe Educators Association (Association) by engaging in surveillance of the Association's Executive Board meetings and by refusing to provide requested information.

I indicated to you, in my attached letter dated June 25, 1999, 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 July 6, 1999, the charge would be dismissed.

On June 28, 1999, your request for an extension of time to file an amended charge was granted to July 20, 1999. An amended unfair practice charge was filed on July 9, 1999.

The amended charge alleges that the District engaged in additional acts of "surveillance." On February 8, 1999, Association site rep Kristine Russell drafted a hand-written letter to "Mike," Association President Mike Patterson, in which she expressed concerns that the District was distributing misleading information to the public regarding an upcoming school bond ballot measure. Ms. Russell attached two letters written by the District concerning the bond measure to her letter and placed them in an inter-District reusable envelope. Ms. Russell addressed the envelope to Mike Patterson and sent it through the inter-District mail system.

On February 11, 1999, Principal Mike Greenfield sent a note to Ms. Russell requesting to meet with her the next morning. On February 12, Ms. Russell and Mr. Patterson met with Mr. Greenfield and District Maintenance Director Steve Morales. Mr. Greenfield pulled out the letter Ms. Russell had written and stated that he had called the meeting to clear up some misconceptions about the bond measure. Ms. Russell asked Mr. Patterson if he had received the letter. He stated he had never seen it. Mr. Greenfield said, "Oh, I thought the letter was to me. That's why I called this meeting." Mr. Morales stated he found the letter to "Mike" on his desk after his secretary opened the mail and he thought that Mr. Greenfield had forwarded it to him.

On March 23, 1999, the District convened a meeting of the Board of Education. An item on the agenda was the adoption of the 1999/00 school calendar. A Board member raised a concern about the number of minimum days scheduled during the school year. Superintendent Rich Alexander stated that all of the minimum days in the proposed calendar were contractual except the minimum day scheduled for December 17, 1999, the day before the Christmas holiday. The Board of Education voted to approve the 1999/00 school calendar with the modification that December 17, 1999 be changed to a full work day. The charge alleges that the day before Christmas vacation has been a minimum day by long standing practice.

Following the District Board of Education meeting, Mr. Patterson went home and sent a computer generated fax message to Association Executive Board members and several members of the Association's Organizing Team. The fax message informed Association members of the District Board's action to eliminate the minimum day scheduled for December 17, 1999.

On March 29, 1999, Mr. Patterson spoke with Mr. Alexander concerning the Board of Education's action on the school calendar. Mr. Patterson requested that Mr. Alexander talk to the Board of Education about restoring December 17 as a minimum day.

On April 14, 1999, in a meeting with Mr. Alexander, Mr. Patterson asked whether Mr. Alexander had spoken to the Board concerning the December 17 minimum day. Mr. Alexander responded that the Board was upset by Mr. Patterson's March 23, 1999 fax concerning the elimination of the minimum day. Mr. Patterson asked how the District Board had received a copy of the fax. Mr. Alexander stated that "Middle School and High School teachers" had given copies of the fax to the District.

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The Association asserts that by the above conduct the District interfered with its protected rights by unlawfully engaging in surveillance of the Association's protected activities.

As I previously discussed in the attached letter, the National Labor Relations Board (NLRB) has generally found that an employer has engaged in unlawful surveillance when the employer photographs or videotapes employees or openly engages in recordkeeping of employees participating in union activities. (F.W. Woolworth Co. (1993) 310 NLRB 1197.)

The conduct described in the charge, where the District was given copies of union meeting minutes and a fax by bargaining unit members, and inadvertently obtained a letter intended for the union president, do not demonstrate that the District engaged in unlawful surveillance of union activities.

The cases cited by Charging Party describe conduct whereby an employer stole union membership applications, removed union authorization cards from an employee's jacket pocket and obtained and reviewed a union business agent's file containing executed authorization cards and employee statements concerning unfair labor practices. (Strozer, Inc. (1977) 232 NLRB 937; Micro Metl Corporation (1981) 257 NLRB 274; Tucker's Minit Markets (1978) 238 NLRB 1188.) There is no evidence in the present charge that the District unlawfully obtained the documents described in the charge.

Accordingly, based on the discussion above and in the attached letter, the allegations that the District interfered with the Association's protected rights by engaging in surveillance of the Association's protected activities and refused to provide requested information, fail to state a prima facie case and are dismissed.

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 Regs., tit. 8, sec. 32635 (a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's

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receipt, not later than the last day set for filing. (Cal. Code Regs., tit. 8, sec. 32135(a); see also Cal. Code Regs., tit. 8, sec. 32130.)

A document is also considered "filed" when received & facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Cal. Code Regs., tit. 8, sec. 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, secs. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

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 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 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. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, sec. 32135(c).)

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

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be accompanied by proof of service of the request upon each party. (Cal. Code 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
Robin W. Wesley
Regional Attorney

Attachment

cc: Allen R. Vinson

PUBLIC EMPLOYMENT RELATIONS BOARD



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



June 25, 1999

Ramon E. Romero
California Teachers Association
P.O. Box 921
Burlingame, CA 94011-0921

Re: South Tahoe Educators Association, CTA/NEA v. Lake Tahoe
Unified School District
Unfair Practice Charge No. SA-CE-1896
WARNING LETTER

Dear Mr. Romero:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board on April 14, 1999. The charge alleges that the Lake Tahoe Unified School District violated the Educational Employment Relations Act (EERA), Government Code section 3543.5(a), (b) and (c), when it interfered with the protected rights of the South Tahoe Educators Association (Association) by engaging in surveillance of the Association's Executive Board meetings and by refusing to provide requested information.

During the Fall of 1998, the Association and the District were engaged in negotiations for a successor contract. On October 5, 1998, the Association's Executive Board met and discussed the contract negotiations. The minutes of the meeting were subsequently distributed to Association members.

At a bargaining session held on November 24, 1998, LeAnne Kankel, Director of Human Resources, had a copy of the minutes of the Executive Board meeting. Ms. Kankel informed the Association's bargaining team that the District's governing board was "appalled and outraged when they read the minutes." The charge alleges that Ms. Kankel "threatened to bring a 'lawyer' back into negotiations to represent the District if STEA continued to communicate with its members that way."

On December 16, 1998, Association President Mike Patterson sent a letter to Ms. Kankel which stated:

It has come to my attention that management brought a copy of STEA Executive Board Minutes into negotiations on November 24, 1998. During that meeting, you stated that some school board members were upset and

agitated after reading some of the items in the minutes.

Please submit the following information to me, in writing, on or before January 6, 1999:

- 1) Who, specifically, gave you a copy of the minutes?
- 2) If you received a copy from someone other than an STEA member, who, specifically, gave that person a copy of the minutes?
- 3) Did school board members have copies of the minutes, and if so, who, specifically, gave them a copy?

In a letter dated December 18, 1998, Allen Vinson, counsel for the District, responded to Mr. Patterson, stating that he was not aware of any legal authority which required the District to provide the information requested. Accordingly, the District declined to provide the requested information.

Based upon the facts stated above, the charge fails to state a prima facie case.

The Association contends that the District interfered with its protected rights by unlawfully engaging in surveillance of the Association's Executive Board meetings.

To state a prima facie case of interference, a charging party must demonstrate that the employer's acts interfered with or tended to interfere with the exercise of protected rights.

(Carlsbad Unified School District (1979) PERB Decision No. 89.) The National Labor Relations Board (NLRB) has generally found that an employer has engaged in unlawful surveillance when the employer photographs or videotapes employees or openly engages in recordkeeping of employees participating in union activities.

(F.W. Woolworth Co. (1993) 310 NLRB 1197.) The mere observation of open, public union activity on or near the employer's property, however, does not constitute unlawful surveillance.

(National Steel & Shipbuilding Co. (1997) 324 NLRB 499.)

The Charging Party asserts that the facts demonstrate that the District may have a secret means of obtaining inside union information and that the District's access to this information may continue. Charging Party contends that the District used its access to the Association's meeting minutes in a threatening way, by letting the Association's bargaining team know that the

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District had access to inside information concerning negotiations.

The charge alleges only that the Association distributed copies of its Executive Board meeting minutes to all Association members and that the District obtained a copy of the minutes. There is no indication from these facts that the District engaged in any type of surveillance of the Executive Board meeting to obtain the minutes. Nor do these facts demonstrate that the District caused harm to the secrecy of the Association's bargaining position. The Association itself distributed the minutes to its members at the school facilities. There is nothing in the minutes identifying them as confidential or directing Association members to protect the confidentiality of the minutes. Accordingly, the charge fails to state a prima facie case of interference.

The charging Party also alleges that the District refused to provide requested information. Charging Party contends that it has a right to know how the District obtained the meeting minutes in order to identify security lapses and to protect its internal processes.

The duty to bargain in good faith requires an employer to provide information requested by an exclusive representative which is necessary and relevant to collective bargaining and contract administration, including grievance processing. (Stockton Unified School District (1980) PERB Decision No. 143; San Bernardino City Unified School District (1998) PERB Decision No. 1270.)

Association President Mike Patterson sent a letter to Ms. Kankel seeking the name of the individual who gave the District a copy of the Executive Board meeting minutes. It is not apparent how obtaining the name of the person who gave the District a copy of the minutes is relevant and necessary to collective bargaining or administration of the contract. Thus, this allegation fails to state a prima facie case and must be dismissed.

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 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

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amended charge or withdrawal from you before July 6, 1999, I shall dismiss your charge. If you have any questions, please call me at (916) 327-8385.

Sincerely,

Robin W. Wesley
Regional Attorney