STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SHEILA ANN HOPPER, Charging Party, v. UNITED TEACHERS OF LOS ANGELES, Respondent.	Case No. LA-CO-848-E PERB Decision No. 1447 June 21, 2001

Appearances: Garrard & Davis by Donald A. Garrard, Attorney, for Sheila Ann Hopper; Geffner & Bush by Steven K. Ury, Attorney, for United Teachers of Los Angeles.

Before Amador, Baker and Whitehead, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Sheila Ann Hopper (Hopper) of a Board agent's dismissal (attached) of her unfair practice charge. In the charge, Hopper alleged that the United Teachers of Los Angeles (UTLA) violated the Educational Employment Relations Act (EERA)[1] by providing an improper notice to nonmember fee payers as required by PERB Regulation 32992.[2]

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

[2]PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. PERB Regulation 32992 (a) reads:

> Each nonmember who will be required to pay an agency fee shall annually receive written notice from the exclusive representative of:
>
> (1) The amount of the agency fee which is to be expressed as a percentage of the annual dues per member based upon the chargeable expenditures identified in the notice;

The Board has reviewed the entire record in this case, including the original and amended unfair practice charge and attachments, the warning and dismissal letters, Hopper's appeal and UTLA's opposition to the appeal. The Board finds the Board agent's dismissal to be free from prejudicial error and adopts it as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. LA-CO-848-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Amador and Baker joined in this Decision.

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(2) The basis for the calculation of the agency fee; and

(3) A procedure for appealing all or any part of the agency fee.

STATE OF CALIFORNIA GRAY DAVIS, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8384
Fax: (916) 327-6377

December 28, 2000

Ms. Sheila Hopper

Re: Sheila Ann Hopper v. United Teachers of Los Angeles
Unfair Practice Charge No. LA-CO-848-E
DISMISSAL LETTER

Dear Ms. Hopper:

In the above-referenced unfair practice charge filed with the Public Employment Relations Board on August 17, 2000, you allege that United Teachers of Los Angeles violated the Educational Employment Relations Act (EERA)[1] by providing an improper notice to nonmember fee payers as required by PERB Reg. 32992[2].

I indicated to you in my attached letter dated November 17, 2000, 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 that 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 November 24, 2000, the charge would be dismissed.

On November 27, 2000, I received your amended charge that alleges the same facts alleged in your initial charge filed with PERB on August 17, 2000. In your amended charge, you state that UTLA's Notice to Nonmembers "is a travesty of the union's obligation to disclose relevant information in discharge of its duties of fair representation of all members of its bargaining unit; and moreover, it fails to comply with the requirements of section 32992." Regulation 32992(a)(1) provides in pertinent part:

> Each non-member who will be required to pay an agency fee shall annually receive a written notice from the exclusive representative of:

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[1] EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

[2] PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Copies may be purchased from PERB's Publications Coordinator, 1031 18th Street, Sacramento, CA 95814-4174, and the text is available at www.perb.ca.gov.

> (1) The amount of the agency fee which is to be expressed as a percentage of the annual dues per member based upon the chargeable expenditures identified in the notice;
>
> (2) The basis for the calculation of the agency fee; and
>
> (3) A procedure for appealing all or any part of the agency fee.

You allege that UTLA has not stated the amount of the agency fee as a percentage of annual member dues. You also state that the only reference to "objection" in the notice is to the objection to the calculation of fair share.

Regulation 32992 specifically requires:

> 1) The exclusive representative must send a written notice annually to each nonmember who will be required to pay an agency fee.
> 2) The annual notice must express the amount of the agency fee.
> 3) The amount of the agency fee may be less than or equal to 100% of the annual dues.
> 4) The chargeable expenditures of the union must be expressed as a percentage of the annual dues.
> 5) The notice must give the basis for the calculation of the chargeable expenditures.
> 6) The notice must contain a procedure for appeal of all or any part of the agency fee.

The amended charge does not provide any new evidence indicating that UTLA failed to meet the requirements of 32992 in the notice sent to nonmembers.

The first requirement set out above appears to have been met. Your use of the UTLA notice to nonmembers as an exhibit in your amended charge supports this finding. You have provided no evidence that UTLA did not send this notice to all nonmembers.

The second and third requirements are met by UTLA's Notice which reads in part:

> If you send an objection, then you will be required to pay only the fair share amount as set forth in the enclosed dues schedule. However, failure to respond will result in payment of an agency fee equal to full membership dues (100%). Under California law and a decision by the U.S. Court of Appeals for the 9th Circuit involving UTLA, your failure to provide a written objection allows UTLA to obtain 100% of membership dues. (page 2.)

The dues schedule attached to the notice lists the monthly dues for a regular full time teacher ($40.67) as well as the dues for other classifications within the bargaining unit. In addition it states the monthly reduced Fair Share amount for each classification.

The fourth requirement is fulfilled by the paragraph on the first page of the Notice that reads:

> Based on the financial information for the respective 1997-1998 fiscal years, the fair share amount of UTLA dues is $352.10 per year, or 29.34 per month on a 12 month basis for regular full time teachers. This represents 72.15% of the full UTLA dues. The attached schedule states both UTLA dues in effect as of December, 1999 and the fair share see to be deducted the first payroll in December, 1999. Full UTLA dues are established at 1½ % of a beginning teacher's salary on the District's salary schedule. The dues and the fair share fees are paid through monthly salary deductions for twelve months.

The fifth requirement is fulfilled by pages 2 - 5 of UTLA's Notice which reads in part:

> The fair share fee amount has been calculated from the expenditures for collective bargaining, grievances and arbitration, contract administration and representation, as well as other relevant and germane matters affecting the terms and conditions of your employment. Criteria for chargeable and non-chargeable expenses have been adopted by UTLA under applicable law, and include the following examples of chargeable expenses: (List of examples follow)
>
> . . . . . .
>
> The fair share does not include any expenses, either direct or indirect, for the following non-chargeable activities: (List of examples follows)
>
> . . . . . .
>
> The fair share fee represents expenses by UTLA in the chargeable categories, and the share of chargeable expenses by UTLA's state and national affiliates. The attached financial reports set forth the major categories of the expenditures of UTLA, CTA, NEA, CFT, and AFT that are chargeable to fair share payers pursuant to the criteria listed above and in the separate reports of each state and national affiliate.
>
> The 72.15% fair share percentage of the full agency fee (100% membership dues) was derived as follows:
>
> 1. $5.00 of the regular annual dues is allocated to political activities and is nonchargeable.

> 2. A percentage of UTLA dues (in addition to the $5.00 political allocation) is non-chargeable. The chargeable amount of UTLA expenditures, as detailed in the enclosed Statement of Allocation of Expenses, is 83.66% of regular dues. UTLA reduced the chargeable expense percentage by 2% to take into account any adjustments that may be deemed necessary at a later date.
> 3. State and national affiliation fees paid by UTLA to either the CTA-NEA or the CFT-AFT, are in the net amount of $103.22 per year to the state affiliate, and $114.00 to the national affiliate. Based on the lowest measure of chargeable activities of the state and national affiliates, the amount of each affiliate's chargeable expenditure that is attributable to a fair share fee payer is 63.1% for the state affiliates and 56.68% for the national affiliates. CTA-NEA reduced the chargeable expenses by 5% to take into account any adjustments that may be deemed necessary at a later date.

The last requirement described above is fulfilled on pages 2 and 6 -7 of UTLA's Notice. Page 2 reads in pertinent part:

> If you have any objections to the calculation of the fair share amount, or any of the financial reports, then you must send or deliver written notice to the UTLA office to be received by November 15, 1999. We urge you to use the enclosed form that can be detached.

The form, titled UTLA - Agency Fee-Fair Share Dues, has a space for the name and employee number of teacher. On it the employee may request membership in UTLA, to pay the fair share dues only, or to pay the fair share dues and object to amount, criteria, financial reports, etc. and request arbitration. There is a line for date and signature as well as the address.

Pages 6 - 7 detail a specific procedure for appealing the calculation of the chargeable expenditures that includes the right to challenge the criteria for chargeability, a procedure for sending in written objection, and the process by which the challenge will be arbitrated.

Finally, UTLA summarizes the options of nonmember employees on page 7 of the Notice:

> Again, you have the following options:
>
> 1. Send to UTLA written notice of intent to pay fair share dues only and/or objections. You will only be charged the reduced fair share dues.
>
> 2. If you do not send written notice to UTLA to be received by UTLA by November 15, 1999, full UTLA dues will be deducted.

3. You may voluntarily join UTLA as a full member.

We are enclosing a form for you to complete and return to UTLA, as well as a UTLA membership application for those who elect to join.

If you have any questions, please call Sue Cadena at UTLA, (213) 368-6242.

Based on this discussion and those in the warning letter, your charge failed to state a prima facie violation regulation 32992.

Right to Appeal

Pursuant to PERB Regulations,[3] 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. (Regulation 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 receipt, not later than the last day set for filing. (Regulations 32135(a) and 32130.)

A document is also considered "filed" when received by 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 Regulation 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. (Regulations 32135(b), (c) and (d); see also Regulations 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

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[3] PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Copies of the Regulations may be purchased from PERB's Publications Coordinator, 1031 18th Street, Sacramento, CA 95814-4174, and the text is available at www.perb.ca.gov.

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. (Regulation 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 Regulation 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. (Regulation 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 be accompanied by proof of service of the request upon each party. (Regulation 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
Andria K. Borba
Board Agent

Attachment

cc: Steven Ury

STATE OF CALIFORNIA GRAY DAVIS, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8384
Fax: (916) 327-6377

November 17, 2000

Sheila Hopper

Re: Sheila Ann Hopper v. United Teachers of Los Angeles
Unfair Practice Charge No. LA-CO-848-E
WARNING LETTER

Dear Ms. Hopper:

In the above-referenced unfair practice charge filed with the Public Employment Relations Board on August 17, 2000, you allege that United Teachers of Los Angeles violated the Educational Employment Relations Act[1] by providing an improper notice to nonmember fee payers as required by PERB Reg. 32992[2].

My investigation of the above reference charge disclosed the following facts.

You are a teacher in the Los Angeles Unified School District. UTLA is the exclusive representative of the teacher's bargaining unit as defined by Government Code section 3540.1(e). You have exercised your right not to be a member of UTLA.

On October 7, 1999, you received a "notice to non-member bargaining unit employees" from UTLA. You allege UTLA violated its duty of fair representation because this notice was inadequate according to Chicago Teachers Union v. Hudson 106 S.Ct. 1066 (1986) and PERB Regulation 32992.[3] Your charge alleges that the notice was "intentionally misleading, convoluted, and nebulous." You further allege that the distinction between agency fee and fair share is unclear because the word "objection" refers to two separate issues in the notice to agency fee payers.

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[1] EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

[2] PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Copies may be purchased from PERB's Publications Coordinator, 1031 18th Street, Sacramento, CA 95814-4174, and the text is available at www.perb.ca.gov.

[3] Chicago Teachers Union v. Hudson is a 1986 Supreme Court case discussing necessary safeguards unions must take to "prevent compulsory subsidization of ideological activity by nonunion employees."

The "notice to nonmember bargaining unit employees" attached to your unfair practice charge states in pertinent part:

> We are providing you this notice of the reduced fair share dues that will become effective as of the first payroll deductions in December, 1999. In addition to explaining the fair share dues, we are sending you the attached financial reports for UTLA and state and national affiliates for their respective 1997-1998 fiscal years.
>
> Under the Collective Bargaining Agreement and existing law, if you do not wish to join UTLA, you are required to pay the fair share of UTLA dues that are chargeable and germane to collective bargaining and representational activities of UTLA that benefit the entire bargaining unit.
>
> Based on the financial information for the respective 1997-1998 fiscal years, the fair share amount of UTLA dues is $352.10 per year, or $29.34 per month on a 12 month basis for regular full time teachers. This represents 72.5% of the full UTLA dues.
>
> If you have any objections to the calculation of the fair share amount, or any of the financial reports, then you must send or deliver a written notice to the UTLA office to be received by November 15, 1999. We urge you to use the enclosed form that can be detached.
>
> If you send an objection, then you will be required to pay only the fair share amount as set forth in the enclosed dues schedule. However, failure to respond will result in payment of an agency fee equal to full membership dues (100%).
>
> The fair share fee represents expenses by UTLA in the chargeable categories, and the share of chargeable expenses by UTLA's state and national affiliates. The attached financial reports set forth the major categories of the expenditures of UTLA, CTA, NEA, CFT, and AFT that are chargeable to fair share payers pursuant to the criteria listed above and in the separate reports of each state and national affiliate.
>
> You have the right to challenge the criteria for chargeability and non-chargeability, the expenditures by UTLA and the state and national affiliates, and the conclusion as to the amount that can be charged to you as a fair share fee. If you wish to file a challenge, then you must send a letter of challenge to the UTLA office to be

> received by November 15, 1999. If you believe you are entitled to pay a lower fair share fee than the amount stated in this, notice, then so indicate, as well as the amount you believe is in dispute. UTLA will place into the independent interest-bearing escrow account the amount of fees that are reasonably in dispute.

In Chicago Teachers Union v. Hudson, the Supreme Court of the United States held:

> Under an agency shop agreement, procedural safeguards are necessary to prevent compulsory subsidization of ideological activity by nonunion employees who object thereto while at the same time not restricting the union's ability to require an employee to contribute to the cost of collective bargaining activities. The fact that nonunion employees' rights are protected by the First Amendment requires that procedures be carefully tailored to minimize an agency shop's infringement on those rights. And the nonunion employee must have a fair opportunity to identify the impact on those rights and to assert a meritorious First Amendment claim. Chicago Teachers Union v. Hudson, 106 S. Ct. 1066, 1068-1069.

The Court further explained that potential objectors must be given sufficient information to gage the propriety of the fee, a list of major categories of expenses, and verification by an independent auditor. *id.* at 1075-1077.

After the Supreme Court's decision in Hudson, PERB regulation 32992 was adopted which requires an exclusive representative to provide an agency fee notice to each nonmember paying an agency fee. PERB regulation 32992 (a) reads:

> Each nonmember who will be required to pay an agency fee shall annually receive written notice from the exclusive representative of:
> (1) The amount of the agency fee which is to be expressed as a percentage of the annual dues per member based upon the chargeable expenditures identified in the notice;
> (2) The basis for the calculation of the agency fee; and
> (3) A procedure for appealing the agency fee.

The procedure for agency fee appeal in regulation 32994 reads:

> (a) If an agency fee payer disagrees with the exclusive representative's determination of the agency fee amount, that employee (hereinafter known as an "agency fee objector") may file an agency fee objection. Such agency fee objection shall be filed with the exclusive representative. An agency fee objector

may file an unfair practice charge that challenges the amount of the agency fee; however, no complaint shall issue until the agency fee objector has first exhausted the exclusive representative's Agency Fee Appeal Procedure. No objector shall be required to exhaust the Agency Fee Appeal Procedure where it is insufficient on its face.

(b) Each exclusive representative that has an agency fee provision shall administer an Agency Fee Appeal Procedure in accordance with the following:

(1) A agency fee objection shall be initiated in writing and shall be filed with an official of the exclusive representative who has authority to resolve agency fee objections.

(2) An agency fee objection shall be filed not later than 30 days following distribution of the notice required under Section 32992 of these regulations.

(3) Within 45 days of the last day for filing an objection under Section 32994(b)(2) of these regulations and upon receipt of the employee's agency fee objection, the exclusive representative shall request a prompt hearing regarding the agency fee before an impartial decisionmaker.

(4) The impartial decisionmaker shall be selected by the Public Employment Relations Board, the American Arbitration Association, or the California State Mediation Service. The selection among these entities shall be made by the exclusive representative.

(5) Any party may make a request for a consolidated hearing of multiple agency fee objections based on case similarities, including but not limited to, hearing location. At any time prior to the start of the hearing, any party may make a motion to the impartial decisionmaker challenging any consolidation of the hearing.

(6) The exclusive representative bears the burden of establishing the reasonableness of the amount of the agency fee.

(7) Agency fee objection hearings shall be fair, informal proceedings conducted in conformance with basic precepts of due process.

(8) All decisions of the agency fee impartial decisionmaker shall be in writing, and shall be rendered no later than 30 days after the close of the hearing.

(9) All hearing costs shall be borne by the exclusive representative, unless the exclusive representative and the agency fee objector agree otherwise.

You have not indicated with specificity how UTLA's notice fails to meet the requirements of PERB regulations. The notice from UTLA explicitly expresses the amount of the agency fee as a percentage of the annual dues per member based upon the chargeable expenditures as required by section 32992(a)(1). The notice also fulfills the section 32992(a)(2) requirement of supplying the basis of the calculation of the agency fee.

Your allegation that the language used to describe the ability of agency fee payers to "object" to the amount and the process by which the union calculated the amount was confusing to nonmembers is not supported by the facts. The "notice to nonmembers" satisfies regulations 32992(a)(3) and 32994. The notice adequately states that a nonmember may object to the fee and sets out an appeals process by which nonmembers may challenge UTLA's calculation of the chargeable amount. UTLA's use of the word "objector" in two different contexts is not a violation of regulation 32994 and is in accordance with the language of the regulation.

You further allege that it appeared to you it was necessary to hire an auditor in order to challenge UTLA's calculation of the fee. The notice does not state such a requirement and it does not appear that a nonmember would need an auditor to participate in an arbitration challenging the calculation of chargeable fees and therefore this allegation is unfounded.

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 amended charge or withdrawal from you before November 24, 2000, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Andria K. Borba
Board Agent

AKB