STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CASSANDRA STEWART (MENTAL HEALTH WORKERS), Charging Party, v. SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 250, Respondent.	Case No. SF-CO-17-M PERB Decision No. 1610-M April 2, 2004

Appearance: Cassandra Stewart, on her own behalf.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

NEIMA, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Cassandra Stewart (Mental Health Workers) (Stewart) of a Board agent's dismissal (attached) of her unfair practice charge. The charge alleged that the Service Employees International Union Local 250 (SEIU) violated its duty of fair representation under the Meyers-Milias-Brown Act (MMBA)[1] by negotiating a new salary scale that did not immediately benefit Stewart and other similarly situated employees. The Board agent dismissed the charge on the grounds that the fact that some bargaining unit members are not satisfied with a negotiated collective bargaining agreement is insufficient to demonstrate a prima facie violation of the duty of fair representation.

[1]MMBA is codified at Government Code section 3500 et seq.

The Board has reviewed the entire record in this matter, including the original and amended unfair practice charge, the warning and dismissal letters and Stewart's appeal.[2] The Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself, subject to the discussion below.

DISCUSSION

Stewart is employed by the City and County of San Francisco (City) as a class 2303 mental health rehabilitation worker. Stewart is a member of the bargaining unit exclusively represented by SEIU and was elected a job steward during the relevant time period. SEIU and the City are parties to a collective bargaining agreement (CBA) effective July 1, 2000 through June 30, 2003.

Stewart alleges that the salary increases provided by the current CBA are unfairly directed towards new employees over incumbent ones. Specifically, SEIU negotiated a higher starting salary for newly hired mental health workers which did not directly benefit more senior employees. Because Stewart and other similarly situated employees do not receive the same level of benefit as newly hired employees, Stewart argues that SEIU violated its duty of fair representation. The Board agent held that the fact that some bargaining unit members are not satisfied with an agreement is insufficient by itself to demonstrate a prima facie violation of the duty of fair representation. (Los Rios College Federation of Teachers, CFT/AFT (Violett, et al.) (1991) PERB Decision No. 889.) The Board agrees.

Unaddressed, however, are vague allegations by Stewart that she was threatened by SEIU because of her complaints regarding the CBA. Stewart alleges that the threats occurred

[2]In reaching its decision, the Board did not consider the additional material submitted by Stewart after the filings were complete in this matter. The Board will consider late-filed appeals only for good cause and Stewart failed to meet this standard. (Regents of the University of California (1997) PERB Decision No. 1239-H.)

on August 25, 2002, during a meeting of SEIU job stewards. Stewart alleges that she was further "threatened" on other dates and labeled a "troublemaker" by SEIU. Taken together, these allegations fail to provide the factual specificity necessary to state a prima facie case of interference. Stewart does not allege the nature of her alleged protected activity or provide details as to how she may have been threatened.[3] Accordingly, the charge must be dismissed.

ORDER

The unfair practice charge in Case No. SF-CO-17-M is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member Whitehead joined in this Decision.

[3]Further, SEIU's alleged attempt to remove Stewart as a job steward may have been an internal union matter. (See California State Employees Association (Hard, et al.) (1999) PERB Decision No. 1368-S.)

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1022
Fax: (510) 622-1027

September 17, 2002

Cassandra Stewart
10516 Creekside Circle
Oakland, CA 94603

Re: Cassandra Stewart (Mental Health Workers) v. SEIU Local 250
Unfair Practice Charge No. SF-CO-17-M
DISMISSAL LETTER

Dear Ms. Stewart:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on April 22, 2002. Cassandra Stewart (Mental Health Workers) alleges that the SEIU Local 250 violated the Meyers-Milias-Brown Act (MMBA)[1] by negotiating for a provision eliminating several steps in the pay scale for Mental Health Workers.

I indicated to you in my attached letter dated August 27, 2002, 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 September 4, 2002, the charge would be dismissed. I later extended this deadline to September 18, 2002.

On September 17, 2002, Charging Party filed a first amended charge. The amended charge includes the same allegations as the original charge. However, the amended charge alleges the Union's conduct was based on the Mental Health Workers race and/or national origin. I will restate the relevant facts below.

The City and County of San Francisco employ Charging Party as a Mental Health Rehabilitation Worker. As such, she is exclusively represented by SEIU Local 250. Local 250 and the City are parties to a collective bargaining agreement which expires on June 30, 2003. Section 382 and 383 provide as follows:

[1] The MMBA is codified at Government Code section 3500 et seq. The text of the MMBA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

> Salary Step Increase for Class 2303 Mental Health Rehabilitation Worker
> Effective July 1, 2002, the City shall eliminate Steps 1 through 4 in the compensation schedule for Class 2303 Mental Health Rehabilitation Worker. The new compensation schedule will be as follows: Step 5 becomes Step 1; Step 6 becomes Step 2; Step 7 becomes Step 3; Step 8 becomes Step 4; Step 9 becomes Step 5; and Step 10 becomes Step 6. All employees below the current Step 5 will be placed at the new Step 1. All employees at or above Step 5 shall be placed at the step corresponding to the new salary steps defined above.
>
> Effective July 1, 2001, the City shall eliminate Step 1 in the compensation schedule for Class 2303 Mental Health Rehabilitation Worker. The new compensation schedule will be as follows: Step 2 becomes Step 1; Step 3 becomes Step 2; Step 4 becomes Step 3; Step 5 becomes Step 4; and Step 6 becomes Step 5. All employees shall be placed at the step corresponding to the new salary steps as defined above.

While the provision seems to freeze current employees who have spent less than 5 years in the Class, the base pay for newly hired employees increased substantially.

For the past several years, Charging Party has been complaining to Local 250 about the salary schedule. More specifically, Charging Party and her co-workers believe the salary schedule unfairly penalizes incumbent workers while benefiting newly hired employees. Although Charging Party has been employed for 5 years, and was previously at Step 5 making $15.00 per hour, she is now on the new Step 1, where her pay remains the same and is the same as new employees. The charge contains nearly 100 pages of documents, most of which is correspondence between Charging Party and Local 250, or union flyers announcing meetings.

The facts herein appear undisputed. Local 250 bargained for the new salary schedule and have not rescinded the agreement per Charging Party's request.

Based on the facts provided herein, the charge as presently written, fails to state a prima facie violation of the duty of fair representation for the reasons provided below.

As a general rule, an exclusive representative enjoys a wide range of bargaining latitude. As the United States Supreme Court stated in Ford Motor Co. v. Huffman (1953) 345 U.S. 330, 338:

> Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete

> satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to good faith and honesty of purpose in the exercise of its discretion.

Acknowledging the need for such discretion, PERB determined that an exclusive representative is not expected or required to satisfy all members of the unit it represents. (California School Employees Association (Chacon) (1995) PERB Decision No. 1108.) Moreover, the duty of fair representation does not mean an employee organization is barred from making an agreement which may have an unfavorable effect on some members, nor is an employee organization obligated to bargain a particular item benefiting certain unit members. (Ibid.; Los Rios College Federation of Teachers (Violett) (1991) PERB Decision No. 889.) The mere fact that Charging Parties were not satisfied with the agreement is insufficient to demonstrate a prima facie violation. (Los Rios College Federation of Teachers (Violett), supra, PERB Decision No. 889.)

Herein, Local 250 bargained for an agreement that benefited newly hired employees by increasing the beginning salary for these positions. Although incumbent employees did not receive a commensurate salary increase, such conduct is not a violation of the duty of fair representation. Local 250's conduct does not appear arbitrary, as they were able to increase starting wages, nor is there any evidence of discriminatory motive. The fact that some employees are not satisfied with the outcome of negotiations does not mean the union has breached its duty.

In the amended charge, Charging Party contends Local 250's actions were based on the race of the Mental Health Workers. However, the only facts presented regarding racial discrimination state that only two of the 45 Mental Health Workers are white. Such facts are insufficient to demonstrate racial animus. As such, this allegation fails to state a prima facie case.

Right to Appeal

Pursuant to PERB Regulations,[2] 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

[2] PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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

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
General Counsel

By _____
Kristin L. Rosi
Regional Attorney

Attachment

cc: William Sokol

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2519
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August 27, 2002

Ellen Mendelson, Attorney
533 Bella Vista Way, 1st floor
San Francisco, CA 94127

Re: Cassandra Stewart (Mental Health Workers) v. SEIU Local 250
Unfair Practice Charge No. SF-CO-17-M
WARNING LETTER

Dear Ms. Mendelson:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on April 22, 2002. Cassandra Stewart (Mental Health Workers) alleges that the SEIU Local 250 violated the Meyers-Milias-Brown Act (MMBA)[1] by negotiating for a provision eliminating several steps in the pay scale for Mental Health Workers.

Investigation of the charge revealed the following. The City and County of San Francisco employ Charging Party as a Mental Health Rehabilitation Worker. As such, she is exclusively represented by SEIU Local 250. Local 250 and the City are parties to a collective bargaining agreement which expires on June 30, 2003. Section 382 and 383 provide as follows:

> Salary Step Increase for Class 2303 Mental Health Rehabilitation Worker
> Effective July 1, 2002, the City shall eliminate Steps 1 through 4 in the compensation schedule for Class 2303 Mental Health Rehabilitation Worker. The new compensation schedule will be as follows: Step 5 becomes Step 1; Step 6 becomes Step 2; Step 7 becomes Step 3; Step 8 becomes Step 4; Step 9 becomes Step 5; and Step 10 becomes Step 6. All employees below the current Step 5 will be placed at the new Step 1. All employees at or above Step 5 shall be placed at the step corresponding to the new salary steps defined above.
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> Effective July 1, 2001, the City shall eliminate Step 1 in the compensation schedule for Class 2303 Mental Health Rehabilitation Worker. The new compensation schedule will be as follows: Step 2 becomes Step 1; Step 3 becomes Step 2; Step

[1] The MMBA is codified at Government Code section 3500 et seq. The text of the MMBA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

> 4 becomes Step 3; Step 5 becomes Step 4; and Step 6 becomes Step 5. All employees shall be placed at the step corresponding to the new salary steps as defined above.

While the provision seems to freeze current employees who have spent less than 5 years in the Class, the base pay for newly hired employees increased substantially.

For the past several years, Charging Party has been complaining to Local 250 about the salary schedule. More specifically, Charging Party and her co-workers believe the salary schedule unfairly penalizes incumbent workers while benefiting newly hired employees. Although Charging Party has been employed for 5 years, and was previously at Step 5 making $15.00 per hour, she is now on the new Step 1, where her pay remains the same and is the same as new employees. The charge contains nearly 100 pages of documents, most of which is correspondence between Charging Party and Local 250, or union flyers announcing meetings.

The facts herein appear undisputed. Local 250 bargained for the new salary schedule and has not rescinded the agreement per Charging Party's request.

Based on the facts provided herein, the charge as presently written, fails to state a prima facie violation of the duty of fair representation for the reasons provided below.

As a general rule, an exclusive representative enjoys a wide range of bargaining latitude. As the United States Supreme Court stated in Ford Motor Co. v. Huffman (1953) 345 U.S. 330, 338:

> Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to good faith and honesty of purpose in the exercise of its discretion.

Acknowledging the need for such discretion, PERB determined that an exclusive representative is not expected or required to satisfy all members of the unit it represents. (California School Employees Association (Chacon) (1995) PERB Decision No. 1108.) Moreover, the duty of fair representation does not mean an employee organization is barred from making an agreement which may have an unfavorable effect on some members, nor is an employee organization obligated to bargain a particular item benefiting certain unit members. (Ibid.; Los Rios College Federation of Teachers (Violett) (1991) PERB Decision No. 889.) The mere fact that Charging Parties were not satisfied with the agreement is insufficient to demonstrate a prima facie violation. (Los Rios College Federation of Teachers (Violett), supra, PERB Decision No. 889.)

Herein, Local 250 bargained for an agreement that benefited newly hired employees by increasing the beginning salary for these positions. Although incumbent employees did not receive a commensurate salary increase, such conduct is not a violation of the duty of fair representation. Local 250's conduct does not appear arbitrary, as they were able to increase starting wages, nor is there any evidence of discriminatory motive. The fact that some employees are not satisfied with the outcome of negotiations does not mean the union has breached its duty.

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 that 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 September 4, 2002, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Kristin L. Rosi
Regional Attorney

KLR