STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

INTERNATIONAL FEDERATION OF PROFESSIONAL & TECHNICAL ENGINEERS, LOCAL 21, AFL-CIO, Charging Party, v. GOLDEN GATE BRIDGE HIGHWAY & TRANSPORTATION DISTRICT, Respondent.	Case No. SF-CE-103-M PERB Decision No. 1669-M July 28, 2004

Appearances: Davis & Reno by Duane W. Reno, Attorney, for International Federation of Professional & Technical Engineers, Local 21, AFL-CIO; Hanson, Bridgett, Marcus, Vlahos & Rudy by Jerrold C. Schaefer, Attorney, for Golden Gate Bridge Highway & Transportation District.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

NEIMA, Members: This case is before the Public Employment Relations Board (Board) on appeal by the International Federation of Professional & Technical Engineers, Local 21, AFL-CIO (Local 21) of a Board agent's dismissal (attached) of its unfair practice charge. The charge alleged that the Golden Gate Bridge Highway & Transportation District (District) violated the Meyers-Milias-Brown Act (MMBA)[1] by unlawfully assisting employees in the filing of a decertification petition and by violating its local rules.

The Board has reviewed the entire record in this matter, including the unfair practice charge, the warning and dismissal letters, Local 21's appeal and the District's response. The

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

Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. SF-CE-103-M is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member Whitehead joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

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

August 4, 2003

Bill Fiore, Representative
IFPTE Local 21
1182 Market Street, Suite 425
San Francisco, CA 94102

Re: International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Golden Gate Bridge Highway & Transportation District
Unfair Practice Charge No. SF-CE-103-M
DISMISSAL LETTER

Dear Mr. Fiore:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on May 8, 2003. The International Federation of Professional & Technical Engineers, Local 21, AFL-CIO alleges that the Golden Gate Bridge Highway & Transportation District violated the Meyers-Milias-Brown Act (MMBA)[1] by unlawfully assisting employees, failing to offer represented employees the same layoff package as non-represented employees and by violating a local rule.

I indicated to you in my attached letter dated July 17, 2003, 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 24, 2003, the charge would be dismissed.

On July 25, 2003, I received a one page letter from Local 21's attorney, Duane Reno. The letter, not served on the Respondent, urges PERB to find that the employees who signed the petition did not understand they were signing a decertification petition. However, as noted in my July 17, 2003, letter, the employees' April 7, 2003, letter to the Respondent is entitled "Petition for Decertification." Moreover, the District's Decertification procedures call for "written proof that at least thirty percent (30%) of the employees in the unit do not desire to be represented by the formerly recognized employee organization." The employees' March 17, 2003, petition states "We are all in agreement that our positions would be better served without

[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.

union representation." Charging Party fails to demonstrate the District's acceptance of this petition violates the MMBA or its own procedures.

As Charging Party has failed to file an amended charge, I am dismissing the charge based on the facts and reasons contained herein, and in my July 17, 2003, letter.

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 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

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

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: Jerrold C. Schaefer

PUBLIC EMPLOYMENT RELATIONS BOARD

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

July 17, 2003

Bill Fiore, Representative
IFPTE Local 21
1182 Market Street, Suite 425
San Francisco, CA 94102

Re: International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Golden Gate Bridge Highway & Transportation District
Unfair Practice Charge No. SF-CE-103-M
WARNING LETTER

Dear Mr. Fiore:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on May 8, 2003. The International Federation of Professional & Technical Engineers, Local 21, AFL-CIO alleges that the Golden Gate Bridge Highway & Transportation District violated the Meyers-Milias-Brown Act (MMBA)[1] by unlawfully assisting employees, failing to offer represented employees the same layoff package as non-represented employees and by violating a local rule.

Investigation of the charge revealed the following. Local 21 is the exclusive bargaining representative of two of the District's 24 bargaining units; the Professional Engineers & Technical Employee unit and the Allied Administrative Employee unit. The District and Local 21 are parties to two collective bargaining agreements, both of which expired on June 30, 2003. With regard to Layoff Rights, Article 21.3 states in relevant part:

> 21.3.1: Vacation, Severance Pay and Other Benefits
> Each employee who is laid off shall receive two weeks severance pay and any and all vacation pay, compensatory time accrual in accordance with District policy, and floating holidays which have been earned and not used through the date of layoff.
>
> * * * * *
>
> 21.3.5: Recall Rights

[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.

> For one year following layoff, the employees on the layoff list who had introductory and regular status shall be in a "recall status." . . . .

The District's Employer-Employee Rules and Regulations provide the same layoff benefits for non-represented employees.

With regard to the decertification of employee organizations, Section 3 of the Rules and Regulations provide as follows:

> (1) A Petition for Decertification alleging that an employee organization granted formal recognition is no longer the majority representative of the employees in an appropriate unit may be filed with the District at any time during the last three months of the term of the Memorandum of Understanding then in effect. The Petition for Decertification may be filed by an employee, a group of employees or their representatives, or an employee organization. The petition, including all accompanying documents, shall be verified, under oath, by the persons signing it that its contents are true. . . The Petition for Decertification shall contain the following information:
>
> (i) the name, address and telephone number of the petitioner and a designated representative authorized to receive notices or requests for further information.
>
> * * * * *
>
> (iii) an allegation that the formerly recognized employee organization no longer represents a majority of the employees in the appropriate unit, and other material facts.
>
> (iv) written proof that at least thirty percent (30%) of the employees in the unit do not desire to be represented by the formally recognized employee organization. Such written proof shall be dated within six months of the date upon which the petition is filed and shall be submitted for confirmation to the District or to a mutually agreed upon disinterested party.

On February 28, 2003, the District's Board of Directors approved the layoff of 31 positions. These positions were filled by both administrative and managerial employees, some of which were non-represented and others which were represented by various unions, including Local 21. The Board of Directors also approved an Enhanced Layoff Package for non-represented employees. The enhanced package offered non-represented employees with additional severance pay in exchange for the employee's waiver of recall rights. Finally, the Board noted

that the enhanced package would serve as a guideline for District negotiations during the required meet and confer process with Local 21 and other unions.

Also on February 28, 2003, in accordance with applicable MOUs, the District notified affected employees and Local 21 of their impending layoff. The District also notified Local 21 that it was willing to meet and confer over the effect of the District's decision.

On March 17, 2003, the District received a decertification request from a group of Local 21 represented employees. The request provided signatures from more than 30% of the represented employees, however the request was not filed within the 90-day period preceding the expiration of the MOU.

On March 20, 2003, the District and Local 21 met to discuss the effects of the layoff. During this meeting, Local 21 requested lifetime medical benefits for one laid off employee and requested the District modify the selection process for three employees. The District rejected the request for lifetime medical benefits but modified the selection process for those employees. Additionally, the District offered the union the same enhanced layoff package as that provided to non-represented employees. On March 27, 2003, the District rejected Local 21's request for additional COBRA benefits to its employees.

On April 7, 2003, District attorney Jerold Schaefer sent a letter to Payroll Coordinator Ana Araya, indicating the deficiencies in the decertification request. On April 7, 2003, Ms. Araya sent a letter to the District's General Manager. The letter stated in pertinent part:

> On behalf of the members petitioning decertification from the Allied Administrative Local 21 bargaining unit, please accept the attached document and allow this group to re-file its petition.
>
> * * * * *
>
> We the undersigned respectfully request that our positions be withdrawn from a represented status with Local 21. We are making this request pursuant to Article 4.8 and Article 40 of the Memorandum of Understanding dated December 27, 2002. We are all in agreement that our positions would be better served without union representation. Please remove the following names and positions from the Allied Administrative Employee Unit.

The letter is signed by fourteen employees.

On April 17, 2003, Local 21's attorney Duane Reno telephoned the District's attorneys to discuss the decertification petition. More specifically, Mr. Reno indicated the petition should be denied as it was not signed under the penalty of perjury and did not contain the addresses of employees who signed the petition. On April 21, 2003, Mr. Reno reiterated Local 21's position that the petition was defective as it was not signed under oath, does not contain the

addresses and telephone numbers of the employees and does not contain an allegation that Local 21 no longer represents a majority of the employees in the unit.

On April 25, 2003, the District sent a letter to Ms. Araya regarding the decertification petition. The letter stated in relevant part:

> The District is in receipt of a letter from counsel for Local 21 concerning your Petition for Decertification. Local 21 believes that your Petition is not sufficient for the following reasons:
>
> *It is not verified, under oath.
>
> *It does not contain the names, addresses and telephone numbers of the employees and a designated representative to receive notice or requests for further information.
>
> * It does not contain a statement that Local 21 no longer represents a majority of the employees in the Unit.
>
> In light of this letter, I am sending to you a copy of section B(1)(I)-(iv) from the District Rules that apply to your Petition. You may correct the Union's concerns by re-filing your Petition with the General Manager and adding the points raised above.

On April 30, 2003, Ms. Araya sent a revised Petition for Decertification. The revised Petition states in pertinent part:

> Under oath, I, Ana M. Araya verify that the following information regarding the majority members of Local 21 is true and correct.
>
> * * * * *
>
> Local 21 no longer represents a majority of members in this Unit, District Rules Section B(1)(v). Please refer to the original petition which was signed by half of the represented positions under the Local 21 bargaining unit.

On May 2, 2003, Mr. Reno sent another letter to the District regarding the Petition for Decertification. In this letter, Mr. Reno stated that it was not clear "the employees who signed the original document believed they were requesting a decertification election or were instead merely requesting a modification of Local 21's unit that would cause them to become unrepresented."

On May 17, 2003, the District informed all parties involved that it would be contacting the SMCS to schedule a secret ballot election.

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

I. Bad Faith Bargaining

The charge alleges that the employer violated Government Code section 3505 and PERB Regulation 32603(c)[2] by engaging in bad faith or "surface" bargaining. Bargaining in good faith is a "subjective attitude and requires a genuine desire to reach agreement." (Placentia Fire Fighters v. City of Placentia (1976) 57 Cal.App.3d 9, 25 [92 LRRM 3373].) PERB has held it is the essence of surface bargaining that a party goes through the motions of negotiations, but in fact is weaving otherwise unobjectionable conduct into an entangling fabric to delay or prevent agreement. (Muroc Unified School District (1978) PERB Decision No. 80.)[3] Where there is an accusation of surface bargaining, PERB will resolve the question of good faith by analyzing the totality of the accused party's conduct. The Board weighs the facts to determine whether the conduct at issue "indicates an intent to subvert the negotiating process or is merely a legitimate position adamantly maintained." (Oakland Unified School District (1982) PERB Decision No. 275; Placentia Fire Fighters, supra.)

The indicia of surface bargaining are many. Entering negotiations with a "take-it-or-leave-it" attitude evidences a failure of the duty to bargain because it amounts to merely going through the motions of negotiations. (General Electric Co. (1964) 150 NLRB 192, 194 [57 LRRM 1491], enf. 418 F.2d 736 [72 LRRM 2530].) Recalcitrance in the scheduling of meetings is evidence of manipulation to delay and obstruct a timely agreement. (Oakland Unified School District (1983) PERB Decision No. 326.) Dilatory and evasive tactics including canceling meetings or failing to prepare for meetings is evidence of bad faith. (Oakland Unified School District, supra, PERB Decision No. 326.) Conditioning agreement on economic matters upon prior agreement on non-economic subjects is evidence of an unwillingness to engage in a give-and-take. (State of California (Department of Personnel Administration) (1998) PERB Decision No. 1249-S.)

Other factors that have been held to be indicia of surface bargaining include: negotiator's lack of authority which delays and thwarts the bargaining process (Stockton Unified School District (1980) PERB Decision No. 143.); insistence on ground rules before negotiating substantive issues (San Ysidro School District (1980) PERB Decision No. 134.); and reneging on tentative agreements the parties already have made (Charter Oak Unified School District (1991) PERB

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

[3] When interpreting the MMBA, it is appropriate to take guidance from cases interpreting the National Labor Relations Act and California labor relations statutes with parallel provisions. (Firefighters Union v. City of Vallejo (1974) 12 Cal.3d 608.)

Decision No. 873; Stockton Unified School District, supra, PERB Decision No. 143; Placerville Union School District (1978) PERB Decision No. 69.).

It is clear, however, that while a party may not merely go through the motions, it may lawfully maintain an adamant position on any issue. Adamant insistence on a bargaining position is not necessarily refusal to bargain in good faith. (Placentia Fire Fighters, supra; Oakland Unified School District, supra, PERB Decision No. 275.) "The obligation of the employer to bargain in good faith does not require the yielding of positions fairly maintained." (NLRB v. Herman Sausage Co. (5th Cir. 1960) 275 F.2d 229 [45 LRRM 2829, 2830].)

Herein, facts provided demonstrate the District met with Local 21 to discuss the effects of the layoff. Moreover, the District offered an Enhanced Severance Package which was not provided for under the parties' MOU. The District's failure to approve additional COBRA benefits for Local 21 members does not constitute bad faith bargaining. The District met with Local 21 and discussed the union's concerns, agreeing to some modifications and rejecting others. As such, this allegation fails to state a prima facie case.

II. Unlawful Assistance

To state a prima facie violation of MMBA sections 3502 and 3503 and PERB Regulation 32603(d), the charging party must allege facts which demonstrate that the employer's conduct tends to interfere with the internal activities of an employee organization or tends to influence the choice between employee organizations. (Santa Monica Community College District (1979) PERB Decision No. 103, (Santa Monica CCD); Redwoods Community College District (1987) PERB Decision No. 650, (Redwoods CCD).)[4] Proof that an employer intended to unlawfully dominate, assist or influence employees' free choice is not required. Nor is it necessary to prove that employees actually changed membership as a result of the employer's act. (Santa Monica CCD; Redwoods CCD.) The threshold test is "whether the employer's conduct tends to influence [free] choice or provide stimulus in one direction or the other." (Santa Monica CCD, p. 22.)

Herein, the alleged unlawful conduct arises from the District's letter informing the employees' of the deficiencies in their Petition for Decertification and providing them with the Rules and Regulations governing such petitions. It is unclear how the District's conduct tends to influence the employees' conduct, given the fact that these employees had already begun the decertification process on their own. Moreover, merely providing the petitioners with the rules and regulations is hardly unlawful assistance. As such, this allegation fails to state a prima facie case.

[4] When interpreting the MMBA, it is appropriate to take guidance from cases interpreting the National Labor Relations Act and California labor relations statutes with parallel provisions. (Firefighters Union v. City of Vallejo (1974) 12 Cal.3d 608.)

III. Violation of Local Rule

PERB Regulation 32603(g) prohibits an employer from violating a local rule adopted pursuant to Government Code section 3507. Charging Party contends the District violated Section 3 of the Rules and Regulations by ordering a secret ballot election. It is unclear, however, how this rule has been violated. The revised Petition for Decertification provides, under oath, that the undersigned employees wish to decertify Local 21 as their representative. The Petition was signed by more than 50% of the bargaining unit and was filed within 90 days of the expiration of the agreement. Additionally, the name, address and telephone numbers of all signatories is provided, a detail not required by Section 3. As the District has correctly applied the local rule, this allegation fails to state a prima facie case.

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 July 24, 2003, 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