

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



FRANCISCO CHANES, FANOR BOHORQUEZ,
GREGORY MONTEZ, REBECCA K. HARPER,
CHARLES ROGER STEARNS,
JAY SCOTT MURPHY, LINDA V. HALL,

Charging Parties,

v.

UPTE, CWA LOCAL 9119,

Respondent.

Case Nos. LA-CO-204-H, LA-CO-208-H
LA-CO-218-H, LA-CO-220-H
LA-CO-221-H,
LA-CO-224-H, LA-CO-233-H

PERB Decision No. 1795-H

December 30, 2005

Appearances: Werner Witke, Representative, for Francisco Chanes, et al.; Leonard Carder by Margot Rosenberg, Attorney, for UPTE, CWA Local 9119.

Before Duncan, Chairman; Shek and McKeag, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Francisco Chanes, et al. (Charging Parties) of a Board agent's dismissal of their unfair practice charges. The charges are the same in a number of cases filed by Werner Witke on behalf of numerous individuals. In each case the charge is the same and the cases captioned above have been addressed together by the Office of the General Counsel and the parties. The charges allege that UPTE, CWA Local 9119 (UPTE) violated the Higher Education Employer-Employee Relations Act (HEERA).¹

Charging Parties allege that UPTE has violated HEERA by collecting agency fees prior to providing Hudson² notices to nonmembers and benefiting from an interest free loan

¹HEERA is codified at Government Code section 3560, et seq.

²Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292 [121 LRRM 2793] (Hudson).

at the expense of Charging Parties for the period between collection and refund of the challenged agency fees. Just as in UPTE, CWA Local 9119 (Abernathy) (2005) PERB Decision No. 1784-H (UPTE (Abernathy)), the Charging Parties in this case allege that this is a violation of PERB Regulation 32992³ which requires that written notice be sent/distributed to nonmembers at least 30 days prior to collection of agency fees and that fees subject to objection shall be placed in an escrow account as set forth in PERB Regulation 32995.

The Board agent dismissed the unfair practice charges for lack of standing based on the Board's decision in California Nurses Association (O'Malley) (2004) PERB Decision No. 1673-H (CNA (O'Malley)).

We have reviewed the complete record in this case, including, but not limited to, the initial unfair practice charges, the warning and dismissal letters, Charging Parties' appeal and UPTE's response to the appeal. We find that CNA (O'Malley) is not applicable here as the charging party in that case is not an agency fee payer. The Charging Parties here are agency fee payers and as such have standing. The essential facts alleged must be taken as true.⁴

Following the reasons set forth in UPTE (Abernathy), this case is referred to the Office of the General Counsel for a complaint to issue. There are several cases with the same facts and they shall be consolidated by the Office of the General Counsel. These cases as currently captioned are:

Kathy Aldern (Case No. LA-CO-104-H), Jo Ann Christina (Case No. LA-CO-105-H), Dale R. Disharoon (Case No. LA-CO-106-H), Gary Steven Ditta (Case No. LA-CO- 107-H), Gary Newell Foreman (Case No. LA-CO- 108-H), Siv Garrod (Case No. LA-CO-109-H), Ruby Lam (Case No. LA-CO-110-H), Xioaqing Li (Case No. LA-CO-112-H), Stephanie Lynn Mount (Case No. LA-CO-113-H), Heather Meri Oakley (Case No. LA-CO-114-H), Robert Ellis Parks (Case No. LA-CO-115-H), Sharon Walker Stanfield (Case No. LA-CO-116-H), Joseph B. Stagg (Case No. LA-CO-117-H),

³PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

⁴Golden Plains Unified School District (2002) PERB Decision No. 1489.

Rodney N. Trout (Case No. LA-CO-118-H), Jun Zhao (Case No. LA-CO-119-H), Leonides B. Sayson (Case No. LA-CO-120-H), Anne Basile Nieves (Case No. LA-CO-122-H), Ottillia J. Bier (Case No. LA-CO-124-H), Peter Baird Billings (Case No. LA-CO-125-H), Sandra Doris Braun (Case No. LA-CO-126-H), Kathleen Donnelly (Case No. LA-CO-130-H), Michael L. Fox (Case No. LA-CO-132-H), Patricia Fay Hasegawa (Case No. LA-CO-133-H), Hammon Dale Humphries (Case No. LA-CO-135-H), Nonna Kondratenko (Case No. LA-CO-138-H), Elizabeth Rose Miller (Case No. LA-CO-140-H), Nghia Nguyen (Case No. LA-CO-141-H), Andrea Kalkhof-Thor (Case No. LA-CO-142-H), Deborah Lou Zmarzly (Case No. LA-CO-143-H), Zhen Ye (Case No. LA-CO-144-H), Steven J. Weaver (Case No. LA-CO-146-H), Hao Trinh (Case No. LA-CO-147-H), Kaizhi Guo Sharman (Case No. LA-CO-150-H), Catherine Ann O'Harra (Case No. LA-CO-153-H), Yukiko Aochi (Case No. LA-CO-154-H), Katherina L. Carter (Case No. LA-CO-157-H), Ruisheng Chang (Case No. LA-CO-158-H), Adam Corey Cox (Case No. LA-CO-160-H), John R. Darsow (Case No. LA-CO-161-H), Laurel A. Davis (Case No. LA-CO-162-H), Carol Asimow Gray (Case No. LA-CO-163-H), Todd Allen Herman (Case No. LA-CO-164-H), Jane Carol Hines (Case No. LA-CO-165-H), Nina Humphries (Case No. LA-CO-166-H), Chi Sung Kim (Case No. LA-CO-167-H), Sherry L. McCann (Case No. LA-CO-170-H), Mihaela E. Nistor (Case No. LA-CO-172-H), Fred Arroyo Oseguera (Case No. LA-CO-173-H), Mabel Pang (Case No. LA-CO-174-H), Jody Michelle Roberts (Case No. LA-CO-176-H), Thomas F. Shea (Case No. LA-CO-178-H), Vandana Singh (Case No. LA-CO-180-H), Andrew Szajczyk (Case No. LA-CO-181-H), Dennis Ta (Case No. LA-CO-182-H), Ian Charles Topham (Case No. LA-CO-183-H), Randal Gerard Unwin (Case No. LA-CO-184-H), Ratko Dragomir Vasic (Case No. LA-CO-185-H), Miguel Vilchez (Case No. LA-CO-186-H), Jennifer M. Wang (Case No. LA-CO-187-H)

Leslie Diane Abrams Carter (Case No. LA-CO-189-H), Jennifer Marie Novak (Case No. LA-CO-192-H), Joseph P. Sanding (Case No. LA-CO-193-H), David Fredrick Weiner (Case No. LA-CO-194-H), Chalermchai Chaloyphian (Case No. LA-CO-196-H), Barbara Jane Dillon (Case No. LA-CO-197-H), Sasa Maslesa Galic (Case No. LA-CO-198-H), Suzanne M. Vega (Case No. LA-CO-199-H), John Malvin Neil (Case No. LA-CO-200-H), Pascal Oevering (Case No. LA-CO-201-H), Michi Yamamoto (Case No. LA-CO-202-H), Judith Berezky (Case No. SA-CO-25-H), Jean Shepard (Case No. SA-CO-26-H), Mahvash Sigaroudinia (Case No. SF-CO-85-H), Christina Petersen Ahn (Case No. SF-CO-86-H), Nikita Yakubovich (Case No. SF-CO-87-H), Mara Crovello (Case No. SF-CO-88-H), Samantha Zhu (Case No. SF-CO-89-H), King Chiu (Case No. SF-CO-90-H), Hamid Nor (Case No. SF-CO-91-H), Martha Costas-Lippmann (Case No. SF-CO-92-H), Vernita Ares (Case No. SF-CO-93-H).

Ivan B. Lee (Case No. LA-CO-191-H)

Nicolette Van Sluis (Case No. LA-CO-213-H)

Gregory F. Welch (Case No. LA-CO-226-H), Julie B. Blix (Case No. LA-CO-230-H)

Leanne Gill (Case No. SA-CO-27-H), Betty Diane Richter (Case No. SA-CO-28-H), Peggy Bledsoe (Case No. SA-CO-29-H), Mika P. Tolson (Case No. SA-CO-30-H),

Sharon Oltjen (Case No. SA-CO-31-H), Theresa M. Harrington (Case No. SA-CO-32-H), Melvin T. Imai (Case No. SA-CO-33-H), Debra V. Aldridge (Case No. SA-CO-36-H), Vera I. Perez (Case No. SA-CO-38-H), Mary J. Williams (Case No. SA-CO-39-H), Andrea Elizabeth Packham (Case No. SA-CO-41-H), Shizuo George Kamita (Case No. SA-CO-42-H), Brenda B. Cameron (Case No. SA-CO-43-H)

Robert Leslie Brooks (Case No. SA-CO-34-H)

Sharon Boylan (Case No. SA-CO-35-H)

Christine E. Joshel (Case No. SA-CO-37-H)

Janice Hatchell Cooper (Case No. SA-CO-45-H)

Lana Widman (Case No. SA-CO-46-H)

Stephanie Abernathy (Case No. LA-CO-123-H), Carolyn G. Lem (Case No. LA-CO-152-H), Xiaoqing Qu (Case No. LA-CO-168-H)

ORDER

The Public Employment Relations Board REMANDS the unfair practice charge in Case Nos. LA-CO-204-H, LA-CO-208-H, LA-CO-218-H, LA-CO-220-H, LA-CO-221-H, LA-CO-224-H and LA-CO-233-H to the Office of the General Counsel for a complaint to issue and for consolidation with Case Nos. LA-CO- 104-H, LA-CO- 105-H, LA-CO- 106-H, LA-CO- 107-H, LA-CO- 108-H, LA-CO- 109-H, LA-CO- 110-H, LA-CO-112-H, LA-CO-113-H, LA-CO-114-H, LA-CO-115-H, LA-CO-116-H, LA-CO-117-H, LA-CO-118-H, LA-CO- 119-H, LA-CO-120-H, LA-CO-122-H, LA-CO-123-H, LA-CO-124-H, LA-CO-125-H, LA-CO-126-H, LA-CO-130-H, LA-CO-132-H, LA-CO-133-H, LA-CO-135-H, LA-CO-138-H, LA-CO-140-H, LA-CO-141-H, LA-CO-142-H, LA-CO-143-H, LA-CO-144-H, LA-CO-146-H, LA-CO- 147-H, LA-CO-150-H, LA-CO-152-H, LA-CO-153-H, LA-CO-154-H, LA-CO-157-H, LA-CO-158-H, LA-CO-160-H, LA-CO-161-H, LA-CO-162-H, LA-CO-163-H, LA-CO-164-H, LA-CO-165-H, LA-CO-166-H, LA-CO-167-H, LA-CO-168-H, LA-CO- 170-H, LA-CO-172-H, LA-CO-173-H, LA-CO- 174-H, LA-CO-176-H, LA-CO-178-H, LA-CO- 180-H, LA-CO-181-H, LA-CO-182-H, LA-CO-183-H, LA-CO-184-H, LA-CO-185-H, LA-CO-186-H, LA-CO-187-H, LA-CO-189-H,

LA-CO-191-H, LA-CO-192-H, LA-CO-193-H, LA-CO-194-H, LA-CO-196-H, LA-CO-197-H,
LA-CO-198-H, LA-CO-199-H, LA-CO-200-H, LA-CO-201-H, LA-CO-202-H, LA-CO-213-H,
LA-CO-226-H, LA-CO-230-H, SA-CO-25-H, SA-CO-26-H, SA-CO-27-H, SA-CO-28-H,
SA-CO-29-H, SA-CO-30-H, SA-CO-31-H, SA-CO-32-H, SA-CO-33-H, SA-CO-34-H,
SA-CO-35-H, SA-CO-36-H, SA-CO-37-H, SA-CO-38-H, SA-CO-39-H, SA-CO-41-H,
SA-CO-42-H, SA-CO-43-H, SA-CO-45-H, SA-CO-46-H, SF-CO-85-H, SF-CO-86-H,
SF-CO-87-H, SF-CO-88-H, SF-CO-89-H, SF-CO-90-H, SF-CO-91-H, SF-CO-92-H and

Members Shek and McKeag joined in this Decision.