

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



RODNEY N. TROUT,

Charging Party,

v.

UPTE, CWA LOCAL 9119

Respondent.

Case No. LA-CO-267-H

PERB Decision No. 1830-H

March 10, 2006

Appearances: Werner Witke, Representative, for Rodney N. Trout; 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 Rodney N. Trout (Trout) of a Board agent's dismissal of his unfair practice charge. The charge alleged that UPTE, CWA Local 9119 (UPTE) violated the Higher Education Employer-Employee Relations Act (HEERA)¹ and PERB Regulation 32994(b)(3)² by collecting agency fees from an agency fee payer objector while failing to request an agency fee hearing within 45 days of the last day for filing an objection to the fees.

After reviewing the entire record in this matter, the Board holds that Trout stated a prima facie violation of section 3571.1(b) of HEERA and PERB Regulation 32994(b)(3) and remands the case to the Office of the General Counsel for issuance of a complaint.

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

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

BACKGROUND

Trout is employed at the University of California, San Diego. Me is an agency fee payer objector. The exclusive representative is UPTE. Trout received a Hudson³ notice from UPTE outlining his rights to object to paying non-chargeable expenses and his rights to challenge the calculation of those expenses by UPTE.

Trout objected and challenged the calculation of non-chargeable expenses but did not receive a letter from the American Arbitration Association (AAA) stating the date of the hearing on the matter. In January 2005, his representative wrote to the AAA advising there had been no notice of a hearing. Documentation provided by Trout shows that the AAA received this correspondence on January 23, 2005. On January 24, 2005, AAA sent a letter to Trout advising him of the date of the arbitration. That letter, unlike letters received by Trout in the past from AAA in this process, did not include the date that UPTE requested that AAA schedule the hearing. Trout alleged that UPTE did not timely request a hearing and that the letter generated by AAA was triggered by the inquiry from Trout's representative. UPTE did not respond to the charge or the amended charge in this case. UPTE did, however, file a response to the appeal filed by Trout following dismissal of his charge by the PERB Board agent.

According to the response to this appeal filed by UPTE; on April 7, 2005, the notice sent to Trout and others did not state a specific date by which objections and challenges must be filed. Instead, it stated that objections and challenges must be filed within thirty-five calendar days of UPTE's mailing of the notice. UPTE then states that the last day to object was October 19, 2004.

³Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292 [121 LRRM 2793] (Hudson).

UPTE has also stated that the notices were mailed on September 3 and 7, 2004. Thirty-five days from those dates are October 8 and 12, respectively. Along with the appeal UPTE produced a copy of a letter allegedly sent to the AAA requesting the AAA hearing. It is dated December 3, 2004. That date is beyond the 45 days after the final date of the mailing of the notices on September 3 or September 7, 2004.

DISCUSSION

PERB Regulation 32994(b)(3) required UPTE to request an agency fee hearing within 45 days of the last date to object to the non-chargeable fees. Under PERB regulations that is no more than 30 days after the distribution of the notices. The 30 days would be either October 8 or 12, 2004 depending on whether the notice to Trout was mailed on September 3 or September 7, 2004. This is a deadline it appears UPTE has missed.

UPTE did not respond to the charges in this case until the dismissal was appealed to the Board. The Board agent found Trout did not state a prima facie case when he did not produce information requested by the Board agent. This consisted of the date Trout received the annual written notice from UPTE, the date Trout sent his objection to UPTE and the date UPTE requested the hearing from AAA.

The first two dates are not relevant under the regulation. What is relevant is the date the notices were sent by UPTE. There is no dispute that those were mailed on September 3 and September 7, 2004. The second date requested, the date Trout objected, is also not relevant under the regulation. Trout has provided documentation that he is an objector and that is not disputed by UPTE. The date of the letter sent by UPTE to AAA is in no way in Trout's control. Trout provided information clearly showing there is a dispute over whether UPTE timely requested the AAA hearing as required by PERB regulation.

The information that UPTE has provided in response to the appeal does not resolve this dispute but shows there clearly is a difference of opinion as to whether UPTE properly complied. Under Golden Plains Unified School District (2002) PERB Decision No, 1489, the facts alleged by the charging party are to be taken as true. The Board agent did not do that here. Trout has made a prima facie case and a complaint must issue.

ORDER

The unfair practice charge in Case No. LA-CO-267-H is hereby REMANDED to the Office of the PERB General Counsel for issuance of a complaint.

Member McKeag joined in this Decision.

Member Shek's concurrence begins on page 5.

SHEK, Member, concurring: I agree with the majority opinion that the Public Employment Relations Board (PERB or Board) agent's dismissal, based on her interpretation of PERB Regulation section 32994(b)(3), was in error. I would find the Board agent's inquiry as to the date Rodney N. Trout (Trout) filed his agency fee objection with the UPTE, CWA Local 9119 (UPTE) to be relevant and appropriate. Under PERB Regulation section 32994(b)(2), "[a]n agency fee objection shall be filed not later than 30 days following distribution of the notice required under Section 32992 of these regulations,"

Although Trout neither alleged nor produced any evidence to show that he had filed an agency fee objection not later than 30 days following distribution of the notice, pursuant to PERB Regulation section 32994(b)(2), his status as an agency fee objector is undisputed, it can be assumed Trout's objection was timely filed, since UPTE raised no defense on the timeliness of Trout's objection and requested a hearing before the American Arbitration Association on his behalf. I would therefore find information concerning the filing date of Trout's agency fee objection to be relevant to the determination here.