

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



VALLABHANENI MEENAKSHI, ET AL.,

Charging Party,

v.

UNION OF AMERICAN PHYSICIANS &
DENTISTS,

Respondent.

Case No. SF-CO-49-S

PERB Decision No. 1846-S

May 24, 2006

Appearances: Kuykendall & Simas by Steven L. Simas, Attorney, for Vallabhaneni Meenakshi, et al; Patricia D. Hernandez, Representative, for Union of American Physicians & Dentists.

Before Duncan, Chairman; McKeag and Neuwald, Members.

DECISION

McKEAG, Member: This case comes before the Public Employment Relations Board (Board) on appeal by Vallabhaneni Meenakshi, et al. (Charging Parties) of a Board agent's dismissal (attached) of their unfair practice charge. The charge alleged that the Union of American Physicians & Dentists (UAPD) violated the Ralph C. Dills Act (Dills Act)¹ when it failed to negotiate a recruitment and retention differential for psychiatrists at the Department of Social Services.

The Board has reviewed the entire record in this matter, including, but not limited to, the unfair practice charge, the first warning letter, UAPD's response, the first amended unfair practice charge, the second warning letter, the additional information submitted by the Charging Parties, the dismissal letter, the Charging Parties' appeal and UAPD's opposition.

¹The Dills Act is codified at Government Code section 3512, et seq.

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

ORDER

The unfair practice charge in Case No. SF-CO-49-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member Neuwald joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: 510-622-1023
Fax: (510)622-1027



December 15, 2005

Steven L. Simas, Attorney
Kuykendall Simas LLP
1201 K Street, Suite 1950
Sacramento, CA 95814

Re: Vallabhaneni Meenakshi v. Union of American Physicians & Dentists
Unfair Practice Charge No. SF-CO-49-S
DISMISSAL LETTER

Dear Mr. Simas:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on September 14, 2005. In the original charge, Vallabhaneni Meenakshi alleged that the Union of American Physicians & Dentists violated the Ralph C. Dills Act (Dills Act)¹ by failing to negotiate specific items for psychiatrists. I issued a Warning Letter on September 28, 2005. After granting an extension to file an amended charge, on October 24, 2005, I received a First Amended Charge, filed on behalf of Dr. Meenakshi and other psychiatrists. I issued a Second Warning Letter on November 10, 2005.

I indicated to you in my attached letter dated November 10, 2005, 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 November 17, 2005, the charge would be dismissed. You requested and were granted an extension until December 1, 2005, to file an amended charge.

On December 1, 2005, I received your Second Amended Charge, with additional information in the form of a letter titled, "Further Information re Amended Charge." Your Second Amended Charge contained the clarification that you were "not contending that [charging parties] disagreed with the UAPD's 'negotiation strategy,' but [charging parties] contend that the UAPD refused to bargain on [charging parties'] behalf when it knew or should have known that DSS management would be receptive to UAPD's proposals." Apparently, Charging Parties' claims are based not on the union's failure to negotiate a successor agreement, but in

¹ The Dills Act is codified at Government Code section 3512 et seq. The text of the Dills Act and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

its failure to request reopen negotiations with DSS on the specific issue of R & R increases for psychiatrists. This clarification, however, does not render the charge viable.

PERB has held that "[t]he failure to negotiate becomes impermissible only where it is founded on the duty or obligation to do so." (Rocklin Teachers Professional Association (Romero) (1980) PERB Decision No. 124.) Not only does the union not have a duty to negotiate any specific proposal with the employer, but your charge fails to establish any duty for the union to request to reopen the existing contract, which is valid until the year 2006.

In my Second Warning Letter, dated November 10, 2005, I cautioned that, in order to state a prima facie case that the Union breached its duty to Charging Parties by lying to its members, you must, at a minimum, present evidence that union agents purposely kept union members uninformed concerning grievances or other matters affecting their employment. In an apparent response to this concern, you provide the declaration of Dr. Meenakshi, which declares that Dr. Bussey stated to union stewards and other members, that there were no psychiatry vacancies at DSS, that the department could move positions around as it wanted and that he didn't think psychiatrists should be treated differently from medical doctors because both classifications had a back-log of cases.

Dr. Meenakshi's veracity is not questioned. However, even accepting Dr. Meenakshi's declarations as true, you have not established that the Union's failure to request to reopen the contract for the purpose of negotiating retention and recruitment incentives solely for psychiatrists, was arbitrary, discriminatory or in bad faith. First, there is nothing in the statute that prohibits a union from unknowingly acting or relying on faulty information. Second, even if Dr. Bussey knowingly made false statements, you have not established that the union's decision not to request reopeners was based on the allegedly false statements.

Finally, you claim that the union refused to negotiate on behalf of the psychiatrists only. However, on May 26, 2005, UAPD Representative James Moore sent a letter to Robert Stavis, Manager of the Disability and Adult Programs Division of the DSS, to meet and discuss over this very topic. In addition on July 7, 2005, Gary Robinson, Executive Director of the UAPD responded to Dr. Schnitzler, one of the charging parties, that the union was prepared to move forward on making a proposal on behalf of all the unit, although not solely on behalf of psychiatrists.

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.) Nor is an employee organization barred from making an agreement which may have an unfavorable effect on some members, or obligated to bargain a particular item benefiting certain unit members. (Ibid.; Los Rios College Federation of Teachers (Violet) (1991) PERB Decision No. 889.) Clearly, charging parties are dissatisfied with the union's refusal to request reopeners on the specific and single issue of R & R increases for psychiatrists. However, from the evidence presented by Charging Parties' original charge, it appears that the UAPD considered Charging Parties' concerns and acted upon them, though not in the specific manner desired by Charging Parties. Thus, you have failed to allege facts demonstrating either that

Respondent breached its duty by failing to negotiate on behalf of charging parties, or that it arbitrarily decided upon a course of action that was injurious to charging parties.

Therefore, I am dismissing the charge based on the facts and reasons contained in this and each of my Warning Letters, dated September 28, 2005 and November 10, 2005.

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. (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

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

SF-CO-49-S
December 15, 2005
Page 4

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

Alicia Clement
Regional Attorney

Attachment

cc: [***]

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: 510-622-1023
Fax: (510)622-1027



November 10, 2005

Vallabhaneni Meenakshi
331 Hidalgo Place
Davis, CA 95616

Steven L. Simas, Attorney
Kuykendall Simas, LLP
1201 K Street, Suite 1950
Sacramento, CA 95814

Re: Vallabhaneni Meenakshi et al., v. Union of American Physicians & Dentists
Unfair Practice Charge No. SF-CO-49-S
WARNING LETTER

Dear Dr. Meenakshi and/or Mr. Simas:¹

The above-referenced unfair practice charge was originally filed with the Public Employment Relations Board (PERB or Board) on September 14, 2005. The charge was amended on November 4, 2005 to include additional charging parties.² Vallabhaneni Meenakshi and the other Charging Parties alleged that the Union of American Physicians & Dentists violated the Ralph C. Dills Act (Dills Act)³ by failing to negotiate specific gains for psychiatrists.

My investigation of the facts giving rise to this charge is as follows. Gary Robinson is the Executive Director of UAPD. James Moore is a Labor Representative for UAPD. Charging Parties are psychiatrists and members of Respondent union.

¹ I left phone messages for Mr. Simas on Friday, November 4, and Thursday, November 10, for the purpose of determining to whom this correspondence should be addressed, in light of the absence of any Notice of Appearance indicating that Mr. Simas is acting as the agent of any of the charging parties. As I have received no response to my messages, I am addressing this letter to both Dr. Meenakshi as a Charging Party and Mr. Simas, as her agent.

² Additional Charging Parties, David Gross, M.D., Sue Regan, M.D., Charlotte Bible, M.D., Joseph Schnitzler, M.D., and Elizabeth Harrison, M.D., have all signed the First Amended Charge. However, I am unable to contact the additional charging parties because their addresses and phone numbers were not included with their signatures. Accordingly, this letter is being sent to Ms. Meenakshi and Mr. Simas, with the intent that it applies to all charging parties.

³ The Dills Act is codified at Government Code section 3512 et seq. The text of the Dills Act and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

Since May 2005, Charging Parties have lobbied for the union's support of a bargaining proposal to address psychiatric staffing shortages by increasing the recruitment and retention (R & R) incentives for their classification.

On May 26, 2005, Moore wrote to Robert Stavis, Manager of the Disability and Adult Programs Division, Northern Region, for the Department of Social Services, requesting a meeting to discuss "the allocation, recruitment and retention of Psychiatrists." The letter specified that the request was not a formal request to meet and confer.

On June 28, 2005, Schnitzler (one of charging parties), wrote to Robinson, requesting a written clarification of the UAPD's position with regard to the recruitment and retention bonus.

On July 7, 2005, Robinson wrote to Schnitzler, explaining the union's position on the psychiatrists' proposed recruitment and retention increase. The Union's position was that it could not justify to its membership a request to increase R & R incentives only for psychiatrists, especially in light of staffing shortages of primary care physicians in Corrections. Rather, the union would adopt a bargaining stance of requesting increased R & R incentives for all of its members, and entertain any counterproposals by the employer to restrict the increases to certain members. This strategy had been successful in the past at achieving gains for psychiatrists.

On July 8, 2005, apparently before receiving the July 7 letter from Robinson, Schnitzler wrote again to Robinson, renewing his request for written clarification of the union's position, and challenging the union's failure to "deal with the inadequate number of psychiatrists in the Department of Social Services and the increase [sic] workloads due to the shortage of psychiatrists."

On July 10, Schnitzler responded to Robinson's July 7 letter. In his response, Schnitzler challenged the union's strategy of requesting an increase in R & R incentives for all members. Schnitzler was concerned that because there were no shortages among non-psychiatric medical consultants, the employer would certainly reject any proposal that included increased R & R incentives for those other, non-psychiatric positions. According to Schnitzler, the adoption by the union of any proposal that included an across-the-board increase would unnecessarily sacrifice any chance the psychiatrists had of gaining an increase.

On November 4, 2005, I received an amended charge on behalf of Meenakshi and a number of other, similarly situated psychiatrists. The Amended Charge alleged violations of the duty of fair representation, interference, and a failure to meet and confer in good faith. The amended charge included additional charging parties, and stated some additional violations of the Act.

Discussion

As a threshold matter, individual employees do not have standing to allege failure to meet and confer violations, (Oxnard School District (Gorcey/Tripp) (1988) PERB Decision No. 667.) nor allege violations of sections which protect the collective bargaining rights of employee organizations. (State of California (Department of Corrections) (1993) PERB Decision No. 972-S.) Accordingly, Charging Parties lack standing to allege a failure to meet and confer in good faith, and Charging Parties may either withdraw this portion of the charge or it will be dismissed.

The remaining allegation is that the union breached its duty to fairly represent the psychiatrists during contract negotiations. As evidence of the Union's breach, Charging Parties allege that the union's vice president provided inaccurate information regarding the shortage of psychiatrists, and that the vice president "admitted" he didn't want psychiatrists to make more than him. Charging Parties also allege that union representative James Moore made some factual misrepresentations to some of charging parties, about the union's and the employer's respective bargaining positions.

The general rule with regard to contract negotiations is that 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:

Any authority to negotiate derives its principal strength from a delegation to the negotiators of a discretion to make such concessions and accept such advantages as, in the light of all relevant consideration, they believe will best serve the interests of the parties represented... 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 (Violet) (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 (Violet), supra, PERB Decision No. 889.)

Essentially, it appears that Charging Parties disagree with the union's bargaining strategy, which is to propose across-the-board pay increases. However, in the July 7, 2005 letter from the union's executive director to Schnitzler, (attached to charging party's original charge), the union explains that a larger differential for psychiatrists in Corrections was gained in the past, when the union requested across the board increases, and the employer countered by limiting the increases to the department with the most need. The union's hope is that, by employing this same bargaining tactic, raises will be won for those most in need of wage increases during the current round of bargaining. The amended charge does not provide any facts to demonstrate that the union's rationale in adopting the same, previously successful bargaining strategy, is in bad faith or without honesty of purpose in the union's exercise of its discretion. That the union refuses to adopt a bargaining stance that could result in greater gains for psychiatrists (at the possible expense of other bargaining unit members), does not establish that the union has breached its duty of fair representation to the psychiatrists.

As for the alleged factual misrepresentations, the NLRB has held that purposeful conduct, unlike simple negligence, violates a union's duty of fair representation. As such, union agents must refrain from purposefully keeping unit members uninformed concerning grievances or matters affecting their employment. (Painters Local 1310 (Reliance Electric Co.) (1984) 270 NLRB 506.)

You have not alleged any facts indicating that Moore or the union vice president intentionally misrepresented the facts for the purpose of keeping unit members uninformed about matters affecting their employment. Your bare characterization that Moore "lied," or that the union vice president provided "inaccurate facts" does not establish that Respondent purposefully misrepresented facts.

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 November 17, 2005, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Alicia Clement
Regional Attorney

AC