

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



COALITION OF UNIVERSITY EMPLOYEES,
LOCAL 6,

Charging Party,

v.

REGENTS OF THE UNIVERSITY OF
CALIFORNIA,

Respondent.

Case No. SF-CE-773-H

PERB Decision No. 1854-H

August 29, 2006

Appearance: Terrence Ryan, Representative, for Coalition of University Employees, Local 6.
Before Shek, McKeag and Neuwald, Members.

DECISION

NEUWALD, Member: This case comes before the Public Employment Relations (PERB or Board) on appeal by the Coalition of University Employees, Local 6 (CUE) of a Board agent's dismissal (attached) of an unfair practice charge. The charge alleged that the Regents of the University of California violated the Higher Education Employer-Employee Relations Act (HEERA)¹ by removing union flyers. CUE alleged that this conduct constituted a violation of HEERA section 3560.

The Board has reviewed the unfair practice charge, the amended unfair practice charge, the warning and dismissal letters, and the appeal of the dismissal. The Board finds the Board agent's dismissal to be free of prejudicial error and adopts it as a decision of the Board itself.

On appeal, CUE presents new charge allegations and new supporting evidence that were not previously presented that were known to CUE when it filed its unfair practice charge

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

and amended unfair practice charge. PERB Regulation 32635(b)² precludes a charging party from raising new allegations or new supporting evidence on appeal without good cause. CUE has failed to demonstrate good cause for the presentation of new allegations and/or supporting evidence on appeal, therefore it is not being considered.

ORDER

The unfair practice charge in Case No. SF-CE-773-H is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Shek and McKeag joined in this Decision.

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

PUBLIC EMPLOYMENT RELATIONS BOARD



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



February 6, 2006

Terrence Ryan, Union Representative
Coalition of University Employees, Local 6
1659 Divisadero St., #2
San Francisco, CA 94115-3009

Re: Coalition of University Employees, Local 6 v. Regents of the University of California
Unfair Practice Charge No. SF-CE-773-H; First Amended Charge
DISMISSAL LETTER

Dear Mr. Ryan:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on September 23, 2005. The Coalition of University Employees, Local 6 alleges that the Regents of the University of California violated the Higher Education Employer-Employee Relations Act (HEERA)¹ by removing union flyers.

I indicated to you in my attached letter dated January 12, 2006, 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 January 19, 2006, the charge would be dismissed. I later extended this deadline to January 26, 2006 and then to February 2, 2006.

On January 31, 2006, I received a first amended charge. The first amended charge states in its entirety as follows:

In fact, much other material was posted in the same areas that it was represented as being banned by the Fire Marshall. However, only union material was removed. Many union members have seen these left posted when security has removed union flyers.

A recitation of the relevant facts are as follows. CUE and the University are parties to a collective bargaining agreement that expired on September 30, 2004. With regard to the posting of union flyers, Article 1 provides as follows:

¹HEERA is codified at Government Code section 3560 et seq. The text of the HEERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

CUE shall have access to general-purpose bulletin boards and shall have the use of those bulletin boards. Any materials posted must be dated and initialed by the union representative responsible for the posting and a copy of all materials posted must be provided to the appropriate University representative at the location at the time of posting. At those locations where the University is responsible for posting material on bulletin boards, the University will post copies of the CUE-provided material within one business day.

On September 13, 2005, CUE representatives posted flyers near the elevators at UCSF's Mount Zion Campus. These notices were not on general-purpose bulletin boards. On that same date, UCSF Security personnel removed the union's flyers, indicating that the removal was done at the direction of the San Francisco Fire Marshall.

Based on the facts provided in the original and amended charges, the charge still fails to state a prima facie violation of the HEERA, for the reasons provided below.

The test for whether a respondent has interfered with the rights of employees under the HEERA does not require that unlawful motive be established, only that at least slight harm to employee rights results from the conduct. The Board described the standard as follows:

[I]n order to establish a prima facie case of unlawful interference, the charging party must establish that the respondent's conduct tends to or does result in some harm to employee rights granted under EERA. (State of California (Department of Developmental Services) (1983) PERB Decision No. 344-S, citing Carlsbad Unified School District (1979) PERB Decision No. 89; Service Employees International Union, Local 99 (Kimmitt) (1979) PERB Decision No. 106.)

Under the above-described test, a violation may only be found if HEERA provides the claimed rights. In Clovis Unified School District (1984) PERB Decision No. 389, the Board held that a finding of coercion does not require evidence that the employee actually felt threatened or intimidated or was in fact discouraged from participating in protected activity.

Herein, the parties bargained over union access rights, including the posting of union notices. As the union placed notices in an area beyond the bargained for area, the University's removal was not unlawful. Charging Party appears to miss the point in arguing that other organizations are permitted to post near the elevators. Charging Party and the University have bargained for specific posting rights. As the union flyers were posted in an area outside of that agreed upon by the parties, the University conduct in removing the flyers does not constitute a violation of the HEERA.

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 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

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

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: Therese Leone
Judy Frates

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
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January 12, 2006

Terrence Ryan, Union Representative
Coalition of University Employees, Local 6
1659 Divisadero St., #2
San Francisco, CA 94115-3009

Re: Coalition of University Employees, Local 6 v. Regents of the University of California
Unfair Practice Charge No. SF-CE-773-H
WARNING LETTER

Dear Mr. Ryan:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on September 23, 2005. The Coalition of University Employees, Local 6 alleges that the Regents of the University of California violated the Higher Education Employer-Employee Relations Act (HEERA)¹ by removing union flyers.

Investigation of the charge revealed the following. CUE is the exclusive bargaining representative for the University's Clerical and Allied Services Units. CUE and the University are parties to a collective bargaining agreement that expired on September 30, 2004. With regard the posting of union flyers, Article 1 provides as follows:

CUE shall have access to general-purpose bulletin boards and shall have the use of those bulletin boards. Any materials posted must be dated and initialed by the union representative responsible for the posting and a copy of all materials posted must be provided to the appropriate University representative at the location at the time of posting. At those locations where the University is responsible for posting material on bulletin boards, the University will post copies of the CUE-provided material within one business day.

On September 13, 2005, CUE representatives posted flyers near the elevators at UCSF's Mount Zion Campus. These notices were not on general-purpose bulletin boards. On that same date, UCSF Security personnel removed the union's flyers, indicating that the removal was done at the direction of the San Francisco Fire Marshall.

¹HEERA is codified at Government Code section 3560 et seq. The text of the HEERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

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

The test for whether a respondent has interfered with the rights of employees under the HEERA does not require that unlawful motive be established, only that at least slight harm to employee rights results from the conduct. The Board described the standard as follows:

[I]n order to establish a prima facie case of unlawful interference, the charging party must establish that the respondent's conduct tends to or does result in some harm to employee rights granted under EERA. (State of California (Department of Developmental Services) (1983) PERB Decision No. 344-S, citing Carlsbad Unified School District (1979) PERB Decision No. 89; Service Employees International Union, Local 99 (Kimmitt) (1979) PERB Decision No. 106.)

Under the above-described test, a violation may only be found if HEERA provides the claimed rights. In Clovis Unified School District (1984) PERB Decision No. 389, the Board held that a finding of coercion does not require evidence that the employee actually felt threatened or intimidated or was in fact discouraged from participating in protected activity.

Herein, the parties bargained over union access rights, including the posting of union notices. As the union placed notices in an area beyond the bargained for area, the University's removal was not unlawful. Moreover, the University's removal of the notices was done at the behest of the Fire Marshall who indicated that no notices, union or otherwise, may be posted near medical center elevators. As such, this charge fails to state a prima facie violation of the HEERA.

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 January 18, _____ shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Kristin L. Rosi

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January 12, 2006
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Regional Attorney

KLR