

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



MARY HIGGINS,

Charging Party,

v.

COALITION OF UNIVERSITY EMPLOYEES,

Respondent.

Case No. SF-CO-157-H

PERB Decision No. 1855-H

August 29, 2006

Appearance: Mary Higgins, on her own behalf.

Before Duncan, Chairman; Shek and McKeag, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (Board) on appeal by Mary Higgins (Higgins) of a Board agent's dismissal (attached) of her unfair practice charge. The charge alleged that the Coalition of University Employees (CUE) violated the Higher Education Employer-Employee Relations Act (HEERA)¹ by removing her as statewide president of CUE.

The Board has reviewed the entire record in this matter, including the original unfair practice charge, the position statement from CUE, the Board agent's warning and dismissal letters and the appeal by Higgins. The Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself.

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

ORDER

The unfair practice charge in Case No. SF-CO-157-H is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Members Shek and McKeag 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



April 5, 2006

Mary Higgins
4711 CallanBlvd#9
Daly City, CA 94015

Re: Mary Higgins v. Coalition of University Employees
Unfair Practice Charge No. SF-CO-157-H
DISMISSAL LETTER

Dear Ms. Higgins:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on January 9, 2006. Mary Higgins alleges that the Coalition of University Employees violated the Higher Education Employer-Employee Relations Act (HEERA)¹ by removing her as the statewide President of CUE.

I indicated to you in my attached letter dated March 9, 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 March 16, 2006, the charge would be dismissed. I later extended this deadline to March 30, 2006.

I have not received either an amended charge or a request for withdrawal. Therefore, I am dismissing the charge based on the facts and reasons contained in my March 9, 2006, 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.

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.

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

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 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.)

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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: Margot Rosenberg

PUBLIC EMPLOYMENT RELATIONS BOARD



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



March 9, 2006

Mary Higgins
4711 Callan Blvd #19
Daly City, CA 94015

Re: Mary Higgins v. Coalition of University Employees
Unfair Practice Charge No. SF-CO-157-H
WARNING LETTER

Dear Ms. Higgins:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on January 9, 2006. Mary Higgins alleges that the Coalition of University Employees violated the Higher Education Employer-Employee Relations Act (HEERA)¹ by removing her as the statewide President of CUE.

Investigation of the charge revealed the following. You are employed by the University of California, San Francisco, as a Clerical employees. As such, you are exclusively represented by CUE.

In September 2004, you were elected Statewide President of CUE. With regard to the removal of elected officers, Article VI, Section G provides as follows:

Recall: A petition signed by 60% of the statewide members which calls for the removal of an officer, shall remove that person from office upon certification by the secretary. . . The petition must state the reasons for the recall, which must be defined as at least one of the following: (i) having engaged in conduct or a course of activity hostile or contrary to the best interests of the union; (ii) willful violation of the constitution; (iii) misappropriation of funds; or (iv) malfeasance in office or neglect of duty.

With regard to actions detrimental to the union, Appendix B 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.

Members may be charged and tried for engaging in activities that are detrimental to the organization.. .

The process: Any member can file a grievance against another member. The person filing must state the nature of the offense and the date it occurred. . . If the board finds there is reasonable cause to believe the charge is valid, the executive board will select a judicial panel made up of five people. . . The judicial panel shall not include any person who is on the statewide or any local executive board.

The judicial panel shall select its chair and shall set a reasonable place and time for the hearing. The hearing shall be held within 30 days of the executive board's determination that a hearing should be held. Both sides shall have the right to cross examine and present witnesses and evidence. . . .

At the conclusion of the hearing, the Judicial Panel shall consider the evidence and arguments and make a decision as to guilt or innocence. Four out of five members of the panel shall be required to uphold a decision of guilty. A decision of guilt shall result in the Judicial Panel choosing from the following penalties: a formal reprimand, a fine, a suspension of membership, expulsion. ..

The charged party may appeal the decision, in writing, within 21 days, to the statewide executive board, by writing to the state president at the CUE post office.

On February 27, 2005, Executive Board member Jackie Bess filed charges against Ms. Higgins pursuant to Appendix B of the CUE Constitution. The grievance alleged fifteen separate allegations against Ms. Higgins, including activities detrimental to the organization by failing to guard against inappropriate spending, misappropriating funds and concealing her wrongdoing. On March 5, 2005, the Executive Board found reasonable cause and ordered a hearing to take place.

On May 7, 2005, the Judicial Panel held an Appendix B hearing with regard to the allegations against Ms. Higgins. During this hearing, Ms. Higgins was represented by Fred Alvarez. Mr. Alvarez was permitted to present evidence and cross examine witnesses.

On June 7, 2005, the Judicial Panel found Ms. Higgins guilty of 8 counts of violation of the Constitution and not guilty on the remaining 7 allegations. In Section 4 of the decision, the Judicial Panel ordered Ms. Higgins to be removed from office for the remainder of her term. Ms. Higgins was not fined or suspended from membership.

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

PERB has held that matters concerning internal union affairs are immune from review by PERB, unless they have a substantial impact on the relationship of unit members to their employer so as to give rise to a duty of fair representation. (Service Employees International Union, Local 99 (Kimmitt) (1979) PERB Decision No. 106; California State Employees Association (Hutchinson and Laosantos) (1998) PERB Decision No. 1304-S.)

In numerous cases, the Board has refused to intervene where the alleged unlawful conduct involved internal union affairs and there was no showing of a substantial impact on the employee-employer relationship. For example, in California State Employees Association (Hackett) (1993) PERB Decision No. 1012-S, the Board found no substantial impact on the employee-employer relationship where the union suspended the bargaining team; submitted a proposal for ratification to the membership which was not approved by the bargaining team; failed to provide a secret ballot; and failed to give the membership any choice on the ballot except to vote for ratification or strike. In California State Employees Association (Garcia) (1993) PERB Decision No. 1014-S, the Board rejected claims of union election irregularities and suspension of a job steward, finding no substantial impact on the employment relationship.

The Board has intervened in the internal affairs of a union when alleged reprisals against members for engaging in union activity substantially impacted the employment relationship. In California Union of Safety Employees (Coelho) (1994) PERB Decision No. 1032-S, the union filed a citizen's complaint against a unit member with his employer and subsequently refused to represent the member in the resulting investigation conducted by the employer. In finding a violation, the Board held that the union's conduct directly impacted the unit member's relationship with his employer. In California Union of Safety Employees (John) (1994) PERB Decision No. 1064-S, the Board found a violation where the union refused to provide representation to a member challenging an adverse action imposed by his employer, after the unit member allegedly participated in the activities of a rival employee organization.

Herein, the charge fails to present any facts demonstrating that the union's conduct substantially impacted Ms. Higgins employment relationship with the University. 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 March 16, 2006, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

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Sincerely,

Kristin L. Rosi
Regional Attorney

KLR
