

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-772-H

PERB Decision No. 1870-H

December 28, 2006

Appearance: Terrence Ryan, Union Representative, for Coalition of University Employees, Local 6.

Before Duncan, Chairman; Shek and Neuwald, Members.

DECISION

SHEK, Member: This case comes before the Public Employment Relations Board (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 (Regents) violated section 3571 of the Higher Education Employer-Employee Relations Act (HEERA)¹ by refusing to provide a copy of "work rules" to CUE.

The Board has reviewed the entire record in this case, including, but not limited to, the unfair practice charge, Regents' position statement, the warning and dismissal letters, and CUE's appeal letter. Based on this review, the Board adopts the warning and dismissal letters as the decision of the Board itself, subject to the following discussion.

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

DISCUSSION

This case involves a missed deadline. CUE filed the unfair practice charge on September 15, 2005. The Board agent issued a warning letter on October 12, 2005, stating that the charge would be dismissed if CUE did not respond by October 19, 2005. The Board agent did not receive a response from CUE and issued the dismissal letter on October 24, 2005. On November 7, 2005, CUE appealed, alleging that the union representative was on vacation between October 12 and 24, and that "an inexperienced staff member did not realize that he had to arrange for an extension."

The November 7, 2005 appeal letter attempted to amend the charge. However, this attempted amendment was untimely. The Board's rules state that a charging party may file an amended charge "[b]efore the Board agent issues or refuses to issue a complaint." (PERB Reg. 32621.)² The Board may excuse a late filing for good cause, where the explanation was "reasonable and credible." (See Barstow Unified School District (1996) PERB Order No. Ad-227 (excusing late filing where a computer error caused the document to be mailed to the wrong office); United Teachers of Los Angeles (Kestin) (2003) PERB Order No. Ad-325 (not excusing late filing where there was an unsworn, uncorroborated, unexplained statement that the filing was lost in the mail); AFT College Staff Guild, Local 1521 (Mrvichin) (2005) PERB Order No. Ad-349 (not excusing late filing where charging party failed to explain how medical condition and pending litigation should excuse the late filing).) In this case, we hold that the failure of union staff to obtain an extension during the union representative's vacation was an insufficient reason to excuse the late filing.

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

Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence. (PERB Reg. 32635(b); Los Angeles County Office of Education (2005) PERB Decision No. 1743.) We similarly hold that there was no showing of "good cause" in this case to allow the attempted amendment of the charge and inclusion of new charge allegations in the November 7, 2005 appeal letter.

ORDER

The unfair practice charge in Case No. SF-CE-772-H 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) 622-1022
Fax: (510) 622-1027



October 24, 2005

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-772-H
DISMISSAL LETTER

Dear Mr. Ryan:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on September 13, 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 refusing to provide information.

I indicated to you in my attached letter dated October 12, 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 October 19, 2005, the charge would be dismissed.

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 October 12, 2005, 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.)

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

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October 24, 2005
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Sincerely,

ROBERT THOMPSON
General Counsel

By
Kristin L. Rosi
Regional Attorney

Attachment

cc: Therese Leone

PUBLIC EMPLOYMENT RELATIONS BOARD



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October 12, 2005

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-772-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 13, 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 refusing to provide information.

Investigation of the charge revealed the following. CUE is the exclusive bargaining representative for the University's clerical employees, including those employed at the University's San Francisco Medical Center. CUE and the University are parties to a collective bargaining agreement that expired on September 30, 2004. The parties are currently negotiating for a successor agreement.

The charge states in its entirety as follows:

On August 19, 2005, CUE Local 6 requested a copy for (sic) Work Rules for all Departments at the Medical Center. They can discipline CUE employees for violating any of these. On September 2, 2005, the Medical Center refused to supply these.

Further investigation of the charge revealed that CUE's request for information pertained to the work rules for employees not within CUE's bargaining unit. The University admits that it refused to provide information regarding the work rules for other bargaining units, as it believed the information was not relevant to CUE's duty to represent employees.

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.

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.

The exclusive representative is entitled to all information that is "necessary and relevant" to the discharge of its duty of representation. (Stockton Unified School District (1980) PERB Decision No. 143). PERB uses a liberal standard, similar to a discovery-type standard, to determine relevance of the requested information. (California State University (1986) PERB Decision No. 613-H.) Failure to provide such information is a per se violation of the duty to bargain in good faith.

Herein, Charging Party has requested information pertaining to the work rules that apply to employees not in Charging Party's bargaining unit. Information requests pertaining to non-bargaining unit employees are not presumed relevant. (State of California (Dept. of Consumer Affairs) (2004) PERB Decision No. 1711-S; Chula Vista City School District (1990) PERB Decision No. 834.) The exclusive representative bears the burden of demonstrating the "probable or potential relevance" of the requested information. Once the employer indicates it does not believe the information is relevant, the union has an obligation to clarify its request and explain how the information is necessary and relevant. (Id.; San Diego Newspaper Guild v. NLRB (1977) 548 F.2d 863.) As the union has not demonstrated the probable or potential relevance of information pertaining to other bargaining units, this charge fails to state a prima facie violation.

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 October 19, 2005, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Kristin L. Rosi
Regional Attorney

KLR