

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



AFSCME COUNCIL 57, LOCAL 146,

Charging Party,

v.

SACRAMENTO HOUSING &
REDEVELOPMENT AGENCY,

Respondent.

Case No. SA-CE-476-M

PERB Decision No. 1939-M

January 11, 2008

Appearances: Beeson, Tayer & Bodine by Costa Kerestenzis, Attorney, for AFSCME Council 57, Local 146; VeRonica Busby, Labor Relations Officer, for Sacramento Housing & Redevelopment Agency.

Before Neuwald, Chair; Shek and McKeag, Members.

DECISION

SHEK, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by AFSCME Council 57, Local 146 (AFSCME) of the partial dismissal of its unfair practice charge. The unfair practice charge alleged that the Sacramento Housing & Redevelopment Agency (SHRA) violated sections 3503 and 3505 of the Meyers-Milias-Brown Act (MMBA)¹ by unilaterally assigning new or different duties to bargaining unit members without meeting and conferring in good faith.

The Board has reviewed the entire record in this case, including but not limited to AFSCME's unfair practice charge and amended charge, SHRA's position statement and response, the Board agent's partial warning letter and partial dismissal letter, AFSCME's

¹MMBA is codified at Government Code section 3500, et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

appeal of the partial dismissal and SHRA's response. The Board hereby affirms the partial dismissal of the unfair practice charge, based on the following discussion.

BACKGROUND

The Unfair Practice Charge filed on May 1, 2007

AFSCME's unfair practice charge alleged the following facts:

1. Since on or about November 6, 2006, SHRA has attempted to require the following classifications to perform work outside their job descriptions:

Maintenance Worker
Maintenance Technician
Maintenance Technician Lead ²

Specifically, SHRA has tried to force the above positions and employees to perform the work of:

Dispatchers
Maintenance Specialist – Electricians
Maintenance Specialist – Carpenters
Maintenance Specialist – HVAC
Maintenance Specialist – Inspectors
Maintenance Specialist – Locksmith
Maintenance Specialist – Painters
Maintenance Specialist – Plumber³

²SHRA states and AFSCME acquiesces by a lack of objection that there is no current classification of Maintenance Technician Lead. Effective January 2008, eight current Maintenance Technician positions will be converted to Lead positions pursuant to an agreement with AFSCME. All references to the "Maintenance Technician Lead" position hereafter will be subject to this information.

In support of this allegation, AFSCME refers to its attachment #1, consisting of SHRA job descriptions for Maintenance Worker and Maintenance Technician.

³In support of this allegation, AFSCME refers to its attachment #2, consisting of SHRA job descriptions for Dispatcher, Maintenance Specialist – Electrician, Maintenance Specialist – Carpenters Maintenance Specialist – HVAC, Maintenance Specialist – Inspector, Maintenance Specialist – Locksmith, Maintenance Specialist – Painter, and Maintenance Specialist – Plumber.

2. Prior to November 6, 2006, Uniform Physical Condition Standard (UPCS) inspections were not performed by bargaining unit employees. Since November 6, 2006, SHRA has unilaterally assigned, without meeting and conferring with AFSCME, UPCS inspections to:

Maintenance Workers
Maintenance Technicians
Maintenance Technician Leads

3. Prior to November 6, 2006, dispatching work was performed by the classification of Dispatcher. Since November 6, 2006, dispatching work has been unilaterally reassigned to:

Maintenance Workers
Maintenance Technicians
Maintenance Technician Leads

4. Prior to November 6, 2006, vacancy inspections, cost estimates for tenant damage and pro-rates work were performed by the AFSCME represented Inspectors. Since November 6, 2006, the vacancy inspections, cost estimates for tenant damage and pro-rates work have been unilaterally assigned to:

Maintenance Workers
Maintenance Technicians
Maintenance Technician Leads

5. Prior to November 6, 2006, complete First Inspection work was done by “others.” Since November 6, 2006, complete First Inspection work has been unilaterally reassigned to:

Maintenance Worker
Maintenance Technicians
Maintenance Technician Leads

6. On or about December 19, 2006, employee Ken Lee (Lee) reported to AFSCME that he was required to do HVAC work, drywall replacement, painting and lock changes. SHRA never met and conferred with AFSCME over these changes.

7. On December 19, 2006, employee Dave Bolen (Bolen) reported to AFSCME that at “River Oaks,” he was asked to check water source furnaces and water levels. At “Alder Grove,” he was asked to check all wall heaters and central heaters, and perform UCPS inspections. SHRA never met and conferred with AFSCME over these changes.

8. On November 9, 2006, Maintenance Technician Jim Roughton (Roughton) was required to do a unit vacancy inspection, perform plumbing repairs, install water heaters and do cost estimates. Roughton’s job title prior to a Letter of Understanding signed by both SHRA and AFSCME, dated October 27, 2006 (the Agreement), was Maintenance Specialist - Painting.

9. On December 19, 2006, Maintenance Technician Ray Garner (Garner) was required to perform unit vacancy inspections. Garner’s job title prior to the Agreement was a Maintenance Specialist - HVAC.⁴

10. Additionally, ten named employees were required to work outside “the scope of their job description.” The employees were: Canote, Roughton, Deam, Hamilton, Larson, Schermerhorn, Sinclair, Richard Lindelli, Mike Martz, and Ronald Croxen.

AFSCME alleges that SHRA has made a unilateral change in the conditions of employment without meeting and conferring with AFSCME.

⁴In support of this allegation, AFSCME refers to its attachment #4, consisting of hand-written “working out of classification document or beyond the scope of your job description” statements of Mary Canote (Canote), Keen Deam (Deam), Alex Hamilton (Hamilton), Richard Larson (Larson), Wayne Schermerhorn (Schermerhorn), Charles Sinclair (Sinclair), and other unidentified personal notes.

SHRA's Response filed on June 4, 2007

SHRA stated that in mid-2005, the U.S. Department of Housing and Urban Development (HUD) promulgated new regulation which required public housing authorities to manage their properties under asset management and project based accounting system rather than the existing centralized operation. In order to comply with the HUD financial reporting requirements, SHRA was mandated to make organizational changes which involved decentralization and reassigning of staff, including AFSCME's represented employees, to individual SHRA property sites. SHRA and AFSCME met and conferred on August 14 and August 31, 2006; and September 8, 18 and 26, 2006. SHRA contends that AFSCME actively participated in the discussions at each meet and confer session, before reaching the Agreement.

The pertinent portion of the Agreement provides the following. First, effective November 1, 2006, eight employees (three were classified Maintenance Specialist – painter; two were classified Maintenance Specialist – HVAC; two were classified Maintenance Specialist – carpenter; and one was classified Maintenance Specialist – locksmith) have requested and accepted a voluntary demotion to the Maintenance Technician classification. All eight employees will receive a “Y-rate” salary at their current salary through December 2007, at which time the salary will revert to the Maintenance Technician classification, Salary Range F, Step 5, consistent with Section 10.4 of the memorandum of understanding (MOU) between SHRA and AFSCME. Effective January 2008, all eight employees will begin receiving five percent (5%) hourly lead pay as specified in Article 9.4 of the MOU, Leadworker pay. Second, effective as soon as practical, one Dispatcher (Karen Boyle) would accept a voluntary demotion to a Housing Technician classification, and the Dispatcher

classification is to be eliminated. The incumbent will be placed in a Housing Technician classification at a Y-rate through December 2007, at which time the salary will then revert to the Maintenance Technician classification, Salary Range C, Step 5.

SHRA argues strenuously that a thorough discussion of the new duties of each classification was held and that certainly, an understanding was reached that as a result of the HUD mandated changes, job duties were moving from specialist to generalist.

The Board Agent's Partial Warning Letter issued on June 8, 2007

In the partial warning letter, the Board agent found that SHRA and AFSCME engaged in several meet and confer sessions that culminated into the Agreement, and that they agreed to the reclassification of positions in the Agreement. The Board agent further found that the Agreement “effectively eliminated the Maintenance Specialist classifications of Painter, HVAC, Carpenter and Locksmith and placed the incumbents from those positions in the classification of Maintenance Technician at a Y-rate through December 2007.” The Board agent found that AFSCME “did agree to the reclassification of those positions,” and therefore, the first and third allegations “failed to demonstrate that the employer unilaterally redefined the positions.” The Board agent found that the sixth and seventh allegations failed “to provide enough detail so as to state a violation,” since there was a lack of “specific information as to what classifications Ken Lee and Dave Bolen hold and why the new duties are not ‘reasonably comprehended within the existing duties.’ [Rio Hondo Community College District (1982) PERB Decision No. 279.]” The Board agent also found that the eighth and ninth allegations failed to state any changes in the specific duties Roughton and Garner were then required to perform as Maintenance Technician, and that the tenth allegation was “so unclear in that it

does not describe what positions the incumbents hold.” The partial warning letter dismissed all allegations except the second and fourth allegations.

AFSCME’s Amended Charge filed on June 25, 2007

AFSCME asserted that “we never agreed to modify existing job descriptions, ... and that ... the work of all the Maintenance Specialty Positions (Dispatcher, Carpenter, HVAC, Electrical, Inspector, Locksmith, Painter, and Plumber) were not contained in the Maintenance Worker and Maintenance Technician Positions.” It stated that Maintenance Workers and Maintenance Technicians perform general repairs, while specialists do “journey level work,” or “the more complex” work. AFSCME referred to a “Maintenance Specialist, Inspector” position that performed a level of inspection which was “markedly different” than the general inspections performed by a “Maintenance Technician.” AFSCME further argued that it had agreed in the Agreement only to demote and promote certain employees, but not to change job descriptions for the Maintenance Classifications. AFSCME also added a new allegation that it did not agree to contract out any service, but did not provide any specific facts regarding the type of service being contracted out, to whom it was being contracted out or when and where the contracting out occurred.

The Board Agent’s Partial Dismissal Letter issued on July 12, 2007

The Board agent stated in the partial dismissal letter that there were insufficient facts to address the issue of contracting out, which was raised in AFSCME’s amended charge. The Board agent dismissed all allegations except the second, fourth and fifth allegations, for the reasons stated in the partial warning letter.

AFSCME’s Appeal of Partial Dismissal filed on August 14, 2007

In its appeal, AFSCME argues that the Board agent: (1) erroneously interpreted the Agreement; (2) did not properly review and analyze the exhibits and additional information provided by AFSCME with its unfair practice charge; and (3) held AFSCME to an improper standard by requiring it to prove its case at this stage, rather than simply to establish a prima facie case.

SHRA's Response to AFSCME's Appeal filed on November 13, 2007

SHRA concurs with the Board agent's partial warning and partial dismissal letters. In addition, SHRA raises the new argument that the 2006-2007 labor agreement (labor agreement) between the parties allows layoffs for "lack of funds, or abolishment of position."

DISCUSSION

The key dispute in this case is whether AFSCME has established a prima facie case for unilateral change.

Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented before the employer notified the exclusive representative and gave it an opportunity to request negotiations. (Vernon Fire Fighters v. City of Vernon (1980) 107 Cal.App.3d 802 [165 Cal.Rptr. 908]; Walnut Valley Unified School District (1981) PERB Decision No. 160; San Joaquin County Employees Association v. City of Stockton (1984) 161 Cal.App.3d 813 [207 Cal.Rptr. 876]; Grant Joint Union High School District (1982) PERB Decision No. 196.)⁵

⁵When interpreting the MMBA, it is appropriate to take guidance from cases interpreting the National Labor Relations Act and California labor relations statutes with parallel provisions. (Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608 [116 Cal.Rptr. 507].)

AFSCME, as the charging party, has the burden of alleging, in a “clear and concise statement of facts,” when the acts of reprisal took place. In Sacramento City Unified School District (2001) PERB Decision No. 1461 (Sacramento City Unified School District), the Board adopted a warning letter that cited the following rule:

PERB Regulation 32615(a)(5) requires, inter alia, that an unfair practice charge include a ‘clear and concise statement of the facts and conduct alleged to constitute an unfair practice.’ Thus, the charging party's burden includes alleging the ‘who, what, when, where and how’ of an unfair practice. (State of California (Department of Food and Agriculture) (1994) PERB Decision No. 1071-S, citing United Teachers-Los Angeles (Ragsdale) (1992) PERB Decision No. 944.) Mere legal conclusions are not sufficient to state a prima facie case. (Ibid.; Charter Oak Unified School District (1991) PERB Decision No. 873.) [Sacramento City Unified School District, warning letter, at p. 8.]

The Board agent correctly stated that in order to prevail on a theory of transfer of job responsibilities, the charging party must demonstrate actual changes in the employee’s job duties. If the changes are reasonably comprehended within the existing job duties, an assignment of such duties, even if never performed before, is not a violation. (Rio Hondo Community College District (1982) PERB Decision No. 279 (Rio Hondo).

However, we disagree with the Board agent’s characterization of the Agreement as an agreement to reclassify the Maintenance Specialist positions.

The Agreement authorizes the promotion/demotion of numerous employees. In particular, it provides that the three employees classified as Maintenance Specialist – painter (Guy Boerner, Lester Douglas and Roughton); the two employees classified as Maintenance Specialist – HVAC (Deam and Garner); the two employees classified as Maintenance Specialist – carpenter (Greg Spitz and John Vinson); and the one employee classified as Maintenance Specialist – locksmith (Jeff Thomason), have all voluntarily accepted a demotion

to the Maintenance Technician classification. The Agreement, however, does not substantiate the Board agent's finding that the parties agreed to "the reclassification of those positions." Rather, what the Agreement provides is that all eight employees will be voluntarily demoted to the classification of the Maintenance Technician, and as such, will perform the duties of the Maintenance Technician.

Notwithstanding our interpretation of the Agreement, we concur with the Board agent's finding that AFSCME has failed to establish a prima facie case for unilateral change based on the facts stated in the first, third, sixth through tenth allegations, and the discussion below.

The First Allegation

AFSCME alleged that employees within the classifications of Maintenance Worker, Maintenance Technician, and Maintenance Technician Lead were required to perform work outside their job descriptions, specifically, the work of Maintenance Specialist in the positions of Electrician, Carpenter, HVAC, Inspector, Locksmith, Painter, and Plumber. There is insufficient evidence in the record to support AFSCME's allegation.

First, AFSCME did not allege who were required by SHRA to perform work outside their job descriptions. If AFSCME were referring to the eight employees⁶ who voluntarily agreed to accept a demotion to the position of Maintenance Technician, then its allegation must fail because of the terms of the Agreement. If AFSCME were referring to the six employees⁷ who submitted hand-written "working out of classification document or beyond the scope of

⁶Guy Boerner, Lester Douglas and Roughton, Deam, Garner; Greg Spitz, John Vinson and Jeff Thomason.

⁷As stated in footnote 4, these six employees were: Canote, Deam, Hamilton, Larson, Schermerhorn and Sinclair.

your job description” statements, its allegation cannot stand either because it is unclear as to the positions held by these six employees.

Second, according to the job description AFSCME provided, the primary purpose of the Maintenance Technician is to “work at an advance level, with limited supervision, maintaining and repairing Agency residential and commercial building and maintaining grounds and landscaped areas of Agency facilities.” Further, this classification acts as the key person in work assignments carried out by several workers, presumably the lower but related classification of Maintenance Worker. “Duties [of the Maintenance Technician] also may include: ... Inspect work sites, evaluate work and check for compliance with established standards and work orders...” (Emphasis added.) The duties of the Maintenance Worker, according to the SHRA job description, is to “assist Maintenance Specialist or work independently, as assigned to: complete general repairs, such as plumbing, electrical, roofing, appliances and HVAC... repair and install doors, furniture, counter tops, cabinets, shelving, floor tile and other carpentry items ... Hang, tape, patch, texture, paint and stain drywall and other interior surfaces ... Repair and install locks and hardware.” (Emphasis added.) In summary, inspection, plumbing, HVAC, electrical, carpentry, painting and locksmith work are reasonably comprehended within the existing job duties of the classifications of Maintenance Worker and Maintenance Technician. (Rio Hondo.)

AFSCME next argued that the classifications of Maintenance Worker and Maintenance Technician perform only generalized work, and would not perform the specialized function performed by Maintenance Specialists. We find the analysis in Rio Hondo to be instructive. In that case, the Board found that the community college district did not unlawfully assign

teaching duties to Cooperative Work Experience (CWE) instructor/coordinators (CWE instructors.) The Board reasoned:

Although it is unrefuted that CWE instructors had not previously been given teaching assignments, we find that the assignment of CWE instructors to teach courses in ‘career development’ was reasonably comprehended within the scope of their existing job duties.... The CWE instructor job description is, on its face, silent as to possible teaching assignments, ... [however] we find that, when the job description is viewed in light of the nature of the CWE program and the type of courses CWE instructors were assigned to teach, the District’s conduct was permissible. (Rio Hondo, at pp. 17-18.) (Emphasis added.)

While we accept to be true AFSCME’s allegation that Maintenance Worker and Maintenance Technician would not perform the same specialized work performed by Maintenance Specialists in the past, we nevertheless find that inspection, plumbing, HVAC, electrical, carpentry, painting and locksmith work have long been intimately related to and a regular part of the building maintenance function of SHRA.⁸ It may be fairly ascertained from the record that the assignment of formerly specialized maintenance duties to employees within the Maintenance Worker and Maintenance Technician classifications was “closely enough related to their existing duties as not to be an unlawful policy change.” (Rio Hondo, at p. 18.)

Thus, AFSCME has failed to establish a prima facie case for unilateral change by alleging that SHRA attempted to require the classifications of Maintenance Worker, Maintenance Technician, and Maintenance Technician Lead to perform work outside their job descriptions.

⁸The SHRA job descriptions for the Maintenance Technician and Maintenance Worker classifications were created in October 1999, and revised in January 2000, over six years before the events giving rising to this charge occurred.

The Third Allegation

AFSCME alleged that dispatching work, formerly performed by the classification of Dispatcher, was unilaterally reassigned to the classifications of Maintenance Worker, Maintenance Technician, and Maintenance Technician Lead. According to the job description AFSCME provided, the primary purpose of the Dispatcher is to “dispatch daily work orders to appropriate staff and to place order for contracted services of non-routine items as needed.” Some essential areas of responsibility include: “Process work orders for routine, on-call, emergency and overtime work ... Post maintenance charges to individual unit accounts ... Prepare computer status reports.”

In comparison, the job description for the Maintenance Technician classification states that the relevant duties include: “Prioritize work orders and create schedules ... Provide back-up workforce when needed ... Provide training and direction for staff ... Use computer to input job data, code and track invoices, write correspondence and prepare reports ... Maintain records and logs of work.” The relevant duties of the Maintenance Worker, as stated in the job description, include: “Maintain records and logs of work.”

Processing work orders, using computer to input data and track invoices are reasonably comprehended within the existing job duties of the classifications of Maintenance Worker and Maintenance Technician. (Rio Hondo.) Thus, AFSCME has failed to establish a prima facie case for unilateral change by alleging that SHRA attempted to require the classifications of Maintenance Worker, Maintenance Technician, and Maintenance Technician Lead to perform work outside their job descriptions, namely that of the Dispatcher. (Rio Hondo.)

The Sixth through Tenth Allegations

AFSCME alleged that SHRA required Lee and Bolen to perform certain maintenance functions without first meeting and conferring with AFSCME “over these changes.” We

concur with the Board agent's finding that AFSCME has failed to provide sufficient information as to Lee and Bolen's existing classifications and why the new duties are not reasonably comprehended within the existing duties.

AFSCME further alleged that Maintenance Technician, Roughton, whose former classifications was Maintenance Specialist – painting, was required to perform a unit vacancy inspection, plumbing repairs, water heater installation, and job estimates; and Maintenance Technician Garner, whose former classifications was Maintenance Specialist – HVAC, was required to perform unit vacancy inspection. As discussed earlier under “The First Allegation” section, Roughton and Garner's allegedly new duties of conducting unit vacancy inspections, performing plumbing repairs, installing water heaters and doing cost estimates are all reasonably comprehended within the existing job duties of the Maintenance Technician.

We concur with the Board agent's conclusion that the tenth allegation lacks specifics on the incumbents' positions, duties, and newly assigned duties that are not reasonably comprehended within their existing duties. We also agree with the Board agent's position that without any specific facts or information, the issue of contracting out cannot be further addressed.

Based on the above analysis, AFSCME's first and third, sixth through tenth allegations, as written, have failed to satisfy its burden of stating sufficient facts to establish that SHRA engaged in a unilateral change. On this basis, we concur with the Board agent's finding that absent a clear and concise statement of the facts and conduct alleged to constitute an unfair practice, AFSCME's charge cannot be sustained.

ORDER

Consistent with this decision, the first, third, sixth through tenth allegations in the unfair practice charge in Case No. SA-CE-476-M are hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chair Neuwald and Member McKeag joined in this Decision.