STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

DEMOSTHENES ANDREW HALCOUSSIS, Charging Party, v. CALIFORNIA FACULTY ASSOCIATION, Respondent.	Case No. LA-CO-502-H PERB Decision No. 2117-H June 14, 2010

Appearances: Melanie Stallings Williams, Attorney, for Demosthenes Andrew Halcoussis; Bernhard Rohrbacher, Director of Representation, for California Faculty Association.

Before Dowdin Calvillo, Chair; McKeag and Wesley, Members.

DECISION

WESLEY, Member: This case is before the Public Employment Relations Board (Board) on appeal by Demosthenes Andrew Halcoussis (Halcoussis) of a Board agent's dismissal (attached) of his unfair practice charge. The charge alleged that the California Faculty Association (CFA) violated the Higher Education Employer-Employee Relations Act (HEERA),[1] by refusing to allow non-union members to cast a vote to determine employee support for a proposed two-day-a-month furlough program. The Board agent dismissed the charge for failure to state a prima facie violation of the HEERA.

The Board has reviewed the warning and dismissal letters and the record in light of Halcoussis' appeal, CFA's response to the appeal,[2] and the relevant law. Based on this review, the Board finds the Board agent's warning and dismissal letters to be a correct statement of the law and well reasoned, and therefore adopts them as the decision of the Board itself.

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

[2] The Board did not consider the furlough agreement, dated July 28, 2009, submitted by CFA with its response to the appeal.

ORDER

The unfair practice charge in Case No. LA-CO-502-H is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chair Dowdin Calvillo and Member McKeag joined in this Decision.

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95811-4124
Telephone: (916) 327-8385
Fax: (916) 327-6377

December 14, 2009

Melanie Stallings Williams
College of Business and Economics
18111 Nordhoff Street
Northridge, CA 91330

Re: *Demosthenes Andrew Halcoussis v. California Faculty Association*
Unfair Practice Charge No. LA-CO-502-H
DISMISSAL LETTER

Dear Ms. Stallings Williams:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on July 22, 2009. Demosthenes Andrew Halcoussis (Charging Party) alleges that the California Faculty Association (CFA or Respondent) violated section 3578 of the Higher Education Employer-Employee Relations Act (HEERA or Act)[1] by refusing to allow non-union members the opportunity to cast a vote in an internal union matter.

Charging Party was informed in the attached Warning Letter dated December 2, 2009, that the above-referenced charge did not state a prima facie case. Charging Party was advised that, if there were any factual inaccuracies or additional facts that would correct the deficiencies explained in that letter, he should amend the charge. He was further advised that, unless he amended the charge to state a prima facie case or withdrew it prior to December 10, 2009, the charge would be dismissed.

On December 10, 2009, this office received a letter from you regarding the above-referenced matter, as well as with respect to Unfair Practice Charge No. LA-CO-501-H. A copy of your letter is attached and states in total as follows:

> Thank you for your letters in the above referenced matters. We do not plan to file amended complaints. We appreciate the time taken in drafting your letters, but disagree with your conclusion. Can you advise about the opportunities for review of your determination?

Since PERB has not received either an amended charge or a request for withdrawal in this case, the charge is hereby dismissed based on the facts and reasons set forth in the December 2, 2009 Warning Letter.

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

Right to Appeal

Pursuant to PERB Regulations,[2] Charging Party 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. (Cal. Code Regs, tit. 8, § 32635, subd. (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 during a regular PERB business day. (Cal. Code Regs, tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of PERB 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. (Cal. Code Regs, tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(916) 322-8231
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. (Cal. Code Regs, tit. 8, § 32635, subd. (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 Cal. Code Regs., tit. 8, § 32140 for the required contents.) The document will be considered properly "served" when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs, tit. 8, § 32135, subd. (c).)

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

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. (Cal. Code Regs, tit. 8, § 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,

TAMI R. BOGERT
General Counsel

By _____
Wendi L. Ross
Deputy General Counsel

Attachments

cc: Bernhard Rohrbacher

California State University
Northridge

PUBLIC EMPLOYMENT
RELATIONS BOARD
HEADQUARTERS OFFICE

2009 DEC 10 PM 12:51

Department of Business Law
College of Business and Economics

December 4, 2009

Wendi L. Ross
Public Employment Relations Board
1031 18th St.
Sacramento, CA 95811-4124

Re: *Melanie Stallings Williams v. CFA*
Unfiar Practice Charge No. LA-CO-501-H

Demosthenes Andrew Halcoussis, v. CFA
Unfair Practice Charge No. LA-CO-502-H

Dear Ms. Ross:

Thank you for your letters in the above referenced matters. We do not plan to file amended complaints. We appreciate the time taken in drafting your letters, but disagree with your conclusion. Can you advise about the opportunities for review of your determination?

Sincerely,

Melanie Stallings Williams, J.D.
Professor & Chair

18111 Nordhoff Street · Northridge · California 91330-8375 · (818) 677-2905 · fax (818) 677-6079 · e-mail *Business.law@csun.edu*

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95811-4124
Telephone: (916) 327-8385
Fax: (916) 327-6377

December 2, 2009

Melanie Stallings Williams
College of Business and Economics
18111 Nordhoff Street
Northridge, CA 91330

Re: *Demosthenes Andrew Halcoussis v. California Faculty Association*
Unfair Practice Charge No. LA-CO-502-H
WARNING LETTER

Dear Ms. Stallings Williams:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on July 22, 2009. Demosthenes Andrew Halcoussis (Charging Party) alleges that the California Faculty Association (CFA or Respondent) violated section 3578 of the Higher Education Employer-Employee Relations Act (HEERA or Act)[1] by refusing to allow non-union members to cast a vote in an internal union matter.

Background

My investigation reveals the following information.

Charging Party is a member of the faculty bargaining unit at California State University (CSU) Northridge. CFA is the exclusive representative for the bargaining unit. Charging Party is not a member of CFA, but rather pays agency fees to CFA. CFA and the CSU are parties to a collective bargaining agreement (CBA).

At the time the charge was filed, CFA was in the midst of conducting an internal vote to determine whether CSU faculty members supported the Union renegotiating the CBA in order to implement a two-day-a-month furlough program (furlough program). CFA permitted only union members—as opposed to non-members—to actually cast a vote. The voting period was originally scheduled to occur from July 13, to July 20, 2009.[2] The vote was subsequently extended until 5:00 p.m. on July 22.

CFA's main website solicited questions about the proposed furloughs from all bargaining unit members. Further, on the CFA website specifically for the CSU Northridge campus, CFA

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

[2] All dates occurred in 2009, unless otherwise specified.

stated, "CSUN CFA chapter invite all faculty to participate in a discussion regarding the furloughs and layoffs. The discussion will take place on Thursday, June 25th from 10am-12pm in the Noski Auditorium." The CSU Northridge website also provided, "You can follow updates on http://twitter.com/cfasun. You can share comments with all CSUN CFA Twitter followers by includ[ing] #cfacsun in your tweet."

Charging Party's Charge

Charging Party's charge states in pertinent part as follows:

> CFA is currently conducting an election to determine whether CSU faculty will authorize the union to renegotiate the contract to permit faculty furloughs. The union will permit only its union members (as opposed to all represented members of the unit) to vote in the election.
>
> It violates Government Code § 3578 to discriminate between union members and agency fee payers when taking a vote on matters subject to the sole representation of the union. Non-members have paid a fee for such representation and are barred from obtaining alternative representation. The CFA, then, is the sole avenue for representation in the bargaining process. Despite that, CFA has excluded agency fee payers from voting on a contract negotiation issue. This violates [Government Code] § 3578 because it discriminates against non-members, effectively disenfranchising them.
>
> Further, the conduct violates non-members' rights to freely associate under the U.S. Constitution. That is, CSU faculty have a right to determine the groups with whom they wish to associate, including those political activities they wish to support financially. Permitting voting only by those unit members willing to contribute to the union's non-chargeable political activities violates that right.

Discussion

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. (*California State Employees Association (Hutchinson and Laosantos)* (1998) PERB Decision No. 1304-S; *Service*

Employees International Union, Local 99 (*Kimmett*) (1979) PERB Decision No. 106.)[3] 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. (*California State Employees Association (Hackett)* (1993) PERB Decision No. 1012-S.)

In the instant charge, Charging Party's sole claim is CFA's refusal to permit non-members the opportunity to vote in CFA's internal vote regarding the proposed furlough program. The Board has previously addressed this issue and held that a "union may exclude non-members from voting as long as the union provides them with an opportunity to communicate their views." (*Kern High Faculty Association, CTA/NEA (Maaskant)* (2006) PERB Decision No. 1834 (adopting the Board agent's dismissal), citing *El Centro Elementary Teachers Association*, *supra*, PERB Decision No. 232 (*El Centro*).)

In *El Centro*, *supra*, PERB Decision No. 232, the Board discussed the duty an exclusive representative owes to non-members. Therein, the Board, citing *Service Employees International Union, Local 99* (*Kimmett*), *supra*, PERB Decision No. 106, stated:

> the duty of fair representation implies *some consideration* of the views of various groups of employees and *some access* for communication of those views, but there is no requirement that formal procedures be established. . . .

(Emphasis added.)

Similarly, in *Kern High Faculty Association, CTA/NEA (Maaskant)*, *supra*, PERB Decision No. 1834, the Board affirmed the same as noted in the following:

> In his third allegation, Mr. Maaskant charges that the Association violated the duty of fair representation by excluding non-members from providing input and voting. In order to state a prima facie violation of the duty of fair representation, Charging Party must show that the Respondent's conduct was arbitrary, discriminatory, or in bad faith. A union violates its duty if non-members are left completely uninformed about the status of negotiations or if they are not provided an opportunity to express their viewpoints. (*Fontana Teachers Association* (1984) PERB Decision No. 416.) . . .

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

> Mr. Maaskant has not properly alleged that he was completely uninformed about the status of negotiations or that he lacked an opportunity to express his viewpoints. The Association conducted a survey of all bargaining unit members before submitting an initial proposal. Additionally, Mr. Maaskant had access to information through the Association's website and through a binder that was kept in the staff lounge. He was also given one document by Ms. Gibson, the Association's site representative.
>
> Similarly, Mr. Maaskant has not adequately alleged that he lacked an opportunity to communicate his views. Mr. Maaskant had the opportunity to communicate his views by completing and returning the Association's survey. He also had the opportunity to attend both ratification meetings and participate in the question and answer sessions. Therefore, because Mr. Maaskant was not completely uninformed and he had the opportunity to communicate his views, Mr. Maaskant has not properly alleged that the Association violated its duty of fair representation by restricting voting to members.

Here, the evidence is quite clear that CFA provided all unit members with notice of the proposed furlough program and an opportunity to communicate their individual views.

> CFA's main website solicited questions about the proposed furloughs from all bargaining unit members.
>
> CFA's website specifically established for the CSU Northridge campus invited all bargaining unit members to the June 25 discussion regarding the furlough program.
>
> CFA's CSU Northridge website also explained how individual unit members could post a message about the proposed furlough program on the website, "Twitter."

This evidence does in fact show that CFA notified all bargaining unit members of the proposed furlough program as well as sought and obtained input about the program from both members and non-members.

Thus, it is determined that Charging Party was not denied notice or an opportunity to express his viewpoints as to the proposed furlough program. Since non-members are not entitled to vote, this charge fails to state facts sufficient to demonstrate a prima facie violation.

Finally, Charging Party asserts that CFA's actions ". . . violates non-members' rights to freely associate under the U.S. Constitution." PERB, however, does not have jurisdiction to enforce the provisions of the U.S. Constitution. (*Union of American Physicians & Dentists (Menaster)* (2007) PERB Decision No. 1918-S.) Accordingly, this allegation will be dismissed.

For these reasons the charge, as presently written, does not state a prima facie case.[4] If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, Charging Party may 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 an authorized agent of 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 an amended charge or withdrawal is not filed on or before **December 10, 2009**,[5] PERB will dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Wendi L. Ross
Deputy General Counsel

WR

[4] In *Eastside Union School District* (1984) PERB Decision No. 466, the Board explained that a prima facie case is established where the Board agent is able to make "a determination that the facts as alleged in the charge state a legal cause of action and that the charging party is capable of providing admissible evidence in support of the allegations. Consequently, where the investigation results in receipt of conflicting allegations of fact or contrary theories of law, fair proceedings, if not due process, demand that a complaint be issued and the matter be sent to formal hearing." (*Ibid.*)

[5] A document is "filed" on the date the document is **actually received** by PERB, including if transmitted via facsimile. (PERB Regulation 32135.)