

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CORNELIU SARCA,

Charging Party,

v.

CSU EMPLOYEES UNION, SEIU LOCAL 2579,

Respondent.

Case No. LA-CO-485-H

PERB Decision No. 2137-H

October 20, 2010

Appearance: Corneliu Sarca, on his own behalf.

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

DECISION

DOWDIN CALVILLO, Chair: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Corneliu Sarca (Sarca) of a Board agent's dismissal of his unfair practice charge. The charge, as amended, alleged that CSU Employees Union, SEIU Local 2579 (CSUEU) violated the Higher Education Employer-Employee Relations Act (HEERA)¹ by improperly calculating the amount of the fee charged to fair share fee payers for fiscal year 2006-2007. The Board agent dismissed the charge, finding that: (1) Sarca lacked standing to challenge the fair share fee calculation; and (2) the charge presented no allegations to establish that the 2006-2007 fair share fee arbitration proceedings were not fair and regular or that the arbitrator's resulting award was repugnant to HEERA.

The Board has reviewed the dismissal and the record in light of Sarca's appeal and the relevant law. Based on this review, the Board affirms the dismissal of the charge for the reasons discussed below.

¹ HEERA is codified at Government Code section 3560 et seq. Unless otherwise indicated, all statutory references are to the Government Code.

BACKGROUND

Sarca is a technician at California State University, Northridge. He is a member of the bargaining unit exclusively represented by CSUEU. Sarca does not pay union dues and, as discussed more fully below, he is not a fair share fee payer.

On August 24, 2006, Sarca represented three bargaining unit members in a fair share fee arbitration.² He argued to the arbitrator that CSUEU's fair share fee calculation was incorrect because it was based on expenses rather than revenue. He further argued that CSUEU failed to follow accounting standards for non-profit organizations as established by the Financial Accounting Standards Board. Sarca also challenged the failure of CSUEU's *Hudson* notice³ to include a balance sheet.

The arbitrator allowed Sarca to present documentary evidence, cross-examine CSUEU witnesses, and submit a post-hearing brief on behalf of the fair share fee payers he represented. In her award, the arbitrator declined to rule on Sarca's *Hudson* notice challenge but upheld CSUEU's calculation of the 2006-2007 fair share fee.

DISCUSSION

PERB Regulation 32994(a) provides, in relevant part:

An agency fee challenger may file an unfair practice charge that challenges the determination of the chargeable expenditures contained in the agency fee amount; however, no complaint shall issue until the agency fee challenger has first exhausted the Exclusive Representative's Challenge Procedure.

² In conformance with *Chicago Teachers Union, Local No. 1 v. Hudson* (1986) 475 U.S. 292 (*Hudson*), PERB Regulation 32994* requires an exclusive representative to provide an agency fee challenger with "a prompt hearing regarding the agency fee before an impartial decisionmaker" within 45 days of the last day for filing an agency fee challenge. (*PERB regs. are codified at Cal. Code Regs., tit. 8, § 31001 et seq.)

³ In conformance with *Hudson*, PERB Regulation 32992 requires that a union send to nonmembers in the bargaining unit an annual notice informing them of the amount of the fair share fee and of their right to challenge the fee calculations.

It is undisputed that Sarca, in his role as representative of the three fair share fee payers, exhausted CSUEU's fair share fee challenge procedure. Nonetheless, because Sarca himself is not a fair share fee payer, we conclude that he lacks standing to file this unfair practice charge.

PERB lacks jurisdiction over an unfair practice charge when the charging party does not have standing to bring the charge. (*Region 4 Court Interpreter Employment Relations Committee and the Superior Court of California, County of Riverside* (2008) PERB Decision No. 1987-I; *Los Angeles Community College District* (1994) PERB Decision No. 1060.) A bargaining unit member who is not obligated to pay a fair share fee does not have standing to challenge the exclusive representative's fair share fee calculation. (*California State Employees Association (Sarca)* (2006) PERB Decision No. 1813-H; *California Nurses Association (O'Malley)* (2004) PERB Decision No. 1607-H; *Los Rios College Federation of Teachers, Local 2279, CFT/AFT (Deglow)* (1992) PERB Decision No. 950.)

Nowhere in his original charge did Sarca allege that he was a fair share fee payer for fiscal year 2006-2007. The Board agent's warning letter informed Sarca of CSUEU's allegation that it ceased requiring him to pay a fair share fee as of July 1, 2004. In his amended charge, Sarca did not dispute this allegation or provide contrary allegations. Therefore, because the charge, as amended, failed to establish that Sarca was a fair share fee payer, we conclude that Sarca lacks standing to file the instant unfair practice charge.

Sarca argues on appeal that he has standing to file this charge because he represented himself and three others at the fair share fee arbitration. The arbitration hearing transcript and the arbitrator's award, both attached to Sarca's charge, show that Sarca participated in the hearing as a representative for three individuals, each of whom had given written authorization for Sarca to represent him or her at the hearing. Neither document indicates that Sarca represented himself at the hearing.

Conversely, the instant unfair practice charge names Sarca as the sole charging party. Had the three individuals Sarca purports to represent been named as charging parties, he could have acted as their representative as long as proper written authorization was filed with PERB. In light of Sarca's lack of standing, the failure to name these three individuals as charging parties divests PERB of jurisdiction over the charge. (*Regents of the University of California* (2004) PERB Decision No. 1592-H [only those individuals who signed the charge will be considered as charging parties].)

Additionally, Sarca contends that CSUEU committed an unfair practice by ceasing to collect fair share fees from him in order to prevent him from challenging its fair share fee calculations. The Board has held that an exclusive representative's decision to refund agency fees to a particular employee does not violate the exclusive representative's duty of fair representation or constitute prohibited discrimination, even when the refund results in the employee no longer being able to participate in an agency fee arbitration. (*Los Rios College Federation of Teachers/CFT/AFT/Local 2279 (Deglow)* (1991) PERB Decision No. 897.) We see no reason why an exclusive representative's decision to cease collecting a fair share fee from an employee should be viewed differently. Moreover, this allegation is untimely because CSUEU ceased collecting fair share fees from Sarca on July 1, 2004, almost three years before Sarca filed this unfair practice charge.⁴

⁴ HEERA section 3563.2, subdivision (a) states that PERB "shall not issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge."

ORDER

The unfair practice charge in Case No. LA-CO-485-H is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Members McKeag and Wesley joined in this Decision.