STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SAN FRANCISCO COUNTY SUPERIOR COURT & REGION 2 COURT INTERPRETER EMPLOYMENT RELATIONS COMMITTEE, Charging Party, v. CALIFORNIA FEDERATION OF INTERPRETERS/THE NEWSPAPER GUILD/COMMUNICATION WORKERS OF AMERICA, LOCAL 39521, Respondent.	Case No. SF-CO-1-I PERB Decision No. 2609-I December 18, 2018

Appearances: Wiley Price & Radulovich, by Joseph E. Wiley, Attorney, for San Francisco County Superior Court & Region 2 Court Interpreter Employment Relations Committee; Weinberg, Roger & Rosenfeld by Anne I. Yen, Attorney, for California Federation of Interpreters/The Newspaper Guild/Communication Workers of America, Local 39521.

Before Banks, Winslow, and Krantz, Board Members.

DECISION

WINSLOW, Member: This case is before the Public Employment Relations Board (PERB or Board) on the San Francisco County Superior Court's and Region 2 Court Interpreter Employment Relations Committee's (collectively referred to herein as "Court")[1] exceptions to the proposed decision of a PERB administrative law judge (ALJ) dismissing the complaint.

The complaint alleged that Respondent California Federation of Interpreters/The Newspaper Guild/Communication Workers of America, Local 39521 (Federation) violated the

[1] Pursuant to Government Code section 71807, trial courts are grouped into regions for collective bargaining purposes. San Francisco County Superior Court and all the superior courts in the first appellate district are in Region 2.

Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act)[2] by deviating from the parties' collective bargaining agreement (CBA) section governing sympathy strikes without affording the Court notice and an opportunity to meet and confer. The complaint also alleged that the Federation failed to meet and confer in good faith when it (1) engaged in a surprise strike; (2) called for, authorized, assisted, encouraged, sanctioned, ratified, condoned, or lent support to essential employees to withdraw their services; and (3) engaged in a sympathy strike during an unlawful primary strike by Service Employees International Union Local 1021 (SEIU).

The ALJ found that these allegations lacked merit, concluding mainly that the Federation did not engage in a sympathy strike. The ALJ found that the Federation notified 10 of its bargaining unit members that the CBA prohibits sympathy strikes but allows employees to ask for an alternative assignment if crossing a picket line is against their conscience. Because the ALJ found that the Federation appropriately informed employees about a provision in the Federation's CBA with the Court, and did not call for a sympathy strike, the ALJ determined that she did not need to resolve whether the alleged sympathy strike was unlawful. Under the ALJ's reasoning, even assuming for the sake of argument that it could have been unlawful for the Federation to call a sympathy strike under one or more of the legal theories set forth in the complaint, the Federation did not call for interpreters to do anything other than to consider whether to request reassignment as expressly permitted in a contract provision that the Court itself negotiated.

The Court excepts to how the ALJ framed the issue and to some of her conclusions about the interpretation of the parties' CBA, whether a sympathy strike occurred, and whether

[2] The Court Interpreter Act is codified at Government Code section 71800 et seq. Unless otherwise specified, all statutory references herein are to the Government Code.

there was an unlawful sympathy strike. The Federation filed no exceptions and asks us to affirm the proposed decision.

The Board has reviewed the Court's exceptions and the Federation's responses thereto, the proposed decision, and the entire record in light of applicable law. Based on this review, the Board has determined that the ALJ's findings of facts are adequately supported by the record as a whole. The Board has also determined that the ALJ's legal conclusions are well reasoned and in accordance with applicable law. Accordingly, we affirm the dismissal of the complaint and underlying unfair practice charge in accordance with our discussion of the Court's exceptions.

FACTUAL BACKGROUND

San Francisco County Superior Court is a trial court within the meaning of Court Interpreter Act section 71801 subdivision (k) and PERB Regulation 32035 subdivision (b).[3] The Region 2 Court Interpreter Employment Relations Committee is a regional court interpreter employment relations committee within the meaning of Court Interpreter Act section 71801 subdivision (h), a regional committee within the meaning of PERB Regulation 32035 subdivision (a), and an employer within the meaning of PERB Regulation 32035 subdivision (e). The Federation is an employee organization within the meaning of Court Interpreter Act section 71801 subdivision (c), a recognized employee organization within the meaning of Court Interpreter Act section 71801 subdivision (g), and an exclusive representative within the meaning of PERB Regulation 32035 subdivision (c).

During the period relevant to this dispute, the parties had a collective bargaining agreement in effect. Article 42 (No Strike/No Lockout) reads:

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

> A. No Strikes or Lockouts
>
> During the term of this Agreement, the Union, its officers, agents, representatives, stewards and members and all other employees shall not, in any way, directly or indirectly, engage in any strike, sympathy strike, slowdown, work stoppage, picketing, or any other interference with or interruption of court work in any Court operations. . . .
>
> B. Crossing Sanctioned Picket Lines
>
> If an employee covered by this Agreement is expected to cross a picket line set up due to a labor dispute sanctioned by a Central Labor Council in the Region, and if crossing that picket line is in conflict with the employee's conscience, the Chief Executive Officer or his/her designee will meet with the Union, if requested, within 24 hours to attempt to reassign the employee in a manner which retains Court services and does not result in disciplinary action against the employee.

Neither party produced evidence about the bargaining history or prior interpretations of Article 42.

Anabelle Garay (Garay) is the Federation representative that works with the San Francisco Superior Court employees. On Friday, October 10, 2014, she was preparing to go to the Federation's annual conference in Los Angeles. She first heard SEIU may be considering a strike at the San Francisco Superior Court at some point on Friday, October 10, 2014, when Federation member Daniel Navarro (Navarro) forwarded her an e-mail from SEIU representative Steve Stallone (Stallone). Navarro's e-mail stated SEIU would strike on Tuesday, October 14, 2014.

After receiving the e-mail, Garay contacted her supervisor at the Federation, Sara Steffens, and also contacted the Federation's attorneys seeking clarification about "what we could and couldn't do and what we needed to advise our members should they have questions." She left for the conference in the morning. At 12:01 p.m., she sent an e-mail to Stallone to ask

if the strike was sanctioned by the California Labor Federation or the San Francisco Labor Council. He responded at 4:25 p.m. that SEIU Local 1021 "definitely has strike sanction from the SFLC." He also urged that "you have a no strike clause in your contract and that means you can't strike, but you still have the right to respect a picket line and not cross it. That is not a strike. Unions do it all the time. . ." Due to her participation in the conference, Garay did not take further action until Monday, October 13, 2014.

On Monday, October 13, 2014, Garay sent an e-mail to 10 San Francisco court interpreters. Her e-mail read:

> Dear SF Interpreters and cross assigners:
>
> Our SEIU 1021 coworkers in San Francisco courts are preparing to strike tomorrow (Tuesday). As you know, our contract ties benefits for interpreters to that of the largest bargaining unit. In SF that's the clerks repped by SEIU, a group of employees who has supported CFI in work actions before. While we are prevented from going on a sympathy strike and picketing as a union, all of you can take individual steps if crossing the picket line is against your conscience.
> If you are scheduled to work and do not feel comfortable crossing the picket line because it's against your conscience, please notify the coordinator of this and ask for an alternative placement. Also contact me also. I will be in SF court and reachable by cell. [number omitted].
>
> Anabelle Garay
> Field Representative
> California Federation of Interpreters

(Emphasis added.)

Garay did not receive any responses to her e-mail. Other than with Navarro, Garay did not have any other communications about the strike with Federation members between October 10, 2014 and the strike.

The Federation did not call for a sympathy strike. In order to call a strike, the Federation would need a recommendation from its bargaining committee, a membership vote, input from its executive board, and approval from the Labor Council. None of those steps occurred. Neither Garay nor any other authorized representatives of the Federation asked any interpreters to not work in support of the SEIU strike.

On October 14, 2014, Garay received an e-mail from Stallone that said SEIU had set up picket lines starting at about 6:30 a.m. She went to the Civic Center Courthouse the morning of the strike and saw picket lines and, around lunchtime, went to the picket line at the Hall of Justice. At some point she spoke at a microphone to express solidarity with SEIU.

At the time of the strike, J.M. Munoz (Munoz) was the principal human resources analyst for the Court. He was also chief labor negotiator for the Court and the principal for communications related to labor disputes and union issues. He learned of SEIU's strike vote within a week or two prior to the strike. He found out about the strike itself at about 7:30 a.m. on October 14, 2014 when his supervisor texted him about it.

During the strike, Munoz triaged critical needs and operations, at which point he learned that most of the Spanish interpreters refused to cross the picket line. They were calling in and reporting it was against their conscience to cross the picket line. The Court notes in its brief that nearly all of these interpreters followed a script when they called. That script appears to be modeled on an October 12, 2014 e-mail from Navarro which encourages interpreters who did not want to cross to call their supervisor and state in part, "**I am requesting reassignment**." (Bold in original.) Munoz did not contact Garay or any other Federation representative that day to discuss the interpreters' requests. The Court did not produce evidence it investigated potential reassignments, and there is no evidence that the

Federation urged interpreters to resist or refuse any lawful response by the Court to their reassignment requests or gave instruction on what they should do if the Court said it had searched and could not find an appropriate reassignment. The Court did not discipline the interpreters who did not cross the picket line.

DISCUSSION

To establish a prima facie case of unilateral change, the charging party must present facts establishing the respondent breached or altered the parties' agreement and that the breach or alteration amounts to a change of policy, evidenced by a generalized effect or continuing impact on negotiable terms and conditions of employment of bargaining unit members. (*Grant Joint Union High School District* (1982) PERB Decision No. 196 (*Grant*); *City of Davis* (2016) PERB Decision No. 2494-M, p. 24.) The standard is equally applicable to unilateral repudiations by an employer or by an employee organization. (*Oxnard Harbor District* (2004) PERB Decision No. 1580-M.) Thus, to prevail, the Court must demonstrate that Article 42 prohibits the conduct Federation members engaged in, and the Court must further prove that the Federation is responsible for such violations.

An established policy may be embodied in the terms of the parties' CBA. (*Grant, supra,* PERB Decision No. 196, p. 8; *Pasadena Area Community College District* (2015) PERB Decision No. 2444, p. 12.) Although PERB lacks authority to enforce contracts, it may interpret contracts when necessary to resolve an alleged unfair practice. (*County of Sonoma* (2011) PERB Decision No. 2173-M, p. 16.)

When required, PERB interprets collective bargaining agreements according to their plain meaning if the language is clear. (*Trustees of the California State University* (1996) PERB Decision No. 1174-H; *Marysville Joint Unified School District* (1983) PERB Decision

No. 314.) If the language is ambiguous, the Board may consider extrinsic evidence, such as bargaining history, where available. (*Los Angeles Unified School District* (1984) PERB Decision No. 407.) The Board also attempts to harmonize contract provisions to give meaning to each provision. (*Victor Valley Community College District* (1986) PERB Decision No. 570.)

In *Los Angeles Superior Court* (2010) PERB Decision No. 2112-I, the Board explained its guiding principles for harmonizing contract provisions:

> When interpreting collective bargaining agreements, including in unilateral change cases, the Board applies traditional rules of contract law, such as the provisions of Civil Code sections 1638 and 1641. (*King City Joint Union High School District* (2005) PERB Decision No. 1777; see also, *City of Riverside* (2009) PERB Decision No. 2027-M.) Each contract clause must be read in conjunction with phrases surrounding it and harmonized as a whole. (*Long Beach Community College District* (2003) PERB Decision No. 1568.) The Board's interpretation should harmonize any potential conflict between provisions of the agreement and give a "reasonable, lawful and effective meaning to all the terms," as provided in Civil Code section 1641. (*King City Joint Union High School District*, *supra*, PERB Decision No. 1777.) The interpretation given must avoid leaving any provision without meaning. (*City of Riverside*, *supra*, PERB Decision No. 2027-M.)

Here, Article 42.A. forbids "the Union, its officers, agents, representatives, stewards and members and all other employees" from "in any way, directly or indirectly, engag[ing] in any . . . sympathy strike." But Article 42.B. provides a procedure that applies when crossing a picket line would conflict with an employee's conscience.

The Court urges that Federation members not crossing SEIU's picket line constitutes a sympathy strike prohibited by Article 42.A. In support of this assertion, the Court points to the fact that the Federation's e-mail to its members mentioned a linkage between benefits SEIU obtains and those to which Federation bargaining unit members would be entitled. The Court

also cites to Garay's speech in support of SEIU's strike at a noontime rally on the day of the strike. Yet neither these facts nor others cited by the Court demonstrate that the Federation repudiated Article 42 when it notified 10 bargaining unit members regarding Article 42's provisions.

Here, Article 42 plainly describes two different types of conduct: sympathy strikes, which are prohibited, and not crossing a picket line, which is subject to the aforementioned accommodating language.[4] Thus, when both subparts are harmonized, Article 42 prohibits sympathy strikes, but does not in any way prohibit the Federation from informing members regarding relevant contract provisions. In this case, the Federation merely advised its members of the applicable contractual provisions, and in doing so, did not repudiate the CBA or otherwise violate the Court Interpreter Act.

The Court admits that Article 42.B. "allows an individual employee to be reassigned if crossing a picket line is in conflict with the employee's conscience." Despite this admission, the Court urges us to read into employees' rights under Article 42.B. a limitation not reflected in the contractual language. Specifically, the Court claims that if the employee's objection to crossing a picket line is based on the employee's support of another union, then that is not a matter of conscience and Article 42.B. offers no protection. The Court does not offer any extrinsic evidence to support this interpretation and we reject this false dichotomy. (*Regents of the University of California* (2004) PERB Decision No. 1638-H, p. 4 [where language in no strike clause is susceptible to more than one interpretation, burden is on charging party

[4] Indeed, it appears Federation member Navarro anticipated the Court reassigning interpreters who refused to cross the picket line when he e-mailed Federation members that "Administration . . . are [sic] looking at other ways of getting us access into the building" if members decline to cross SEIU picket lines.

employer to provide extrinsic evidence manifesting "clear mutual intent" as to the employer's preferred interpretation]; accord *Oxnard Harbor District*, *supra*, PERB Decision No. 1580-M, p. 9.)

In reaching this conclusion, we note that the parties agree that subsection B of Article 42 permits an employee to be reassigned if crossing a picket line is in conflict with the employee's conscience, and disagree mainly as to the meaning of the term "conscience." In the absence of any evidence of what the parties intended when they bargained the terms of Article 42.B., there is no basis for the Court's peculiar proclamation that "conscience" somehow precludes employees acting on what they may consider an ethical imperative to show solidarity with striking employees. Given that supporting another union is protected under other PERB-administered statutes[5] (*McPherson v. PERB* (1987) 189 Cal.App.3d 293, 309-311), any waiver of that right would need to be clear and unmistakable. (*San Marcos Unified School District* (2003) PERB Decision No. 1508, pp. 27-30.) Here, the plain language of the contract expressly confirms an employee's basic right to support another union. If the Court intended a term like "conscience" to function as some form of limitation on this right, it was plainly incumbent upon the Court to negotiate such a limitation more clearly and unmistakably. It did not do so.

In Re Teamsters Local Union No. 688, on which the Court relies, does not aid its argument. (*In Re Teamsters Local Union No. 688* (2005) 345 NLRB 1150 (*Teamsters*).) In *Teamsters*, the National Labor Relations Board (NLRB) found that the CBA barred sympathy strikes, even though another provision permitted employees to refrain from crossing picket

[5] It is appropriate for PERB to apply precedents developed under other acts administered by the Board. (*Service Employees International Union, Local 790 (Banks, et al.)* (2004) PERB Decision No. 1636-M.)

lines. (*Id*. at p. 1151.) In harmonizing these provisions, the NLRB concluded that individuals honoring picket lines is distinct from a sympathy strike, and the prohibition on sympathy strikes was entirely consistent with the contract language allowing "an individual employee to make a personal decision as to whether to honor a third-party picket line." (*Ibid*.) *Teamsters* is distinguishable from the instant case in the specifics of the contract language at issue. Moreover, that case involved union conduct that was very different from the facts here, where the ALJ was correct in characterizing the Federation's conduct as informing employees about the applicable provisions in their CBA. The primary import of *Teamsters*, then, is that it shows how bargaining unit members making individual decisions when faced with a different union's picket line is distinct from their union calling a sympathy strike. In *Teamsters*, that distinction meant a union could not punish members for their individual decisions not to honor a picket line. Here, it supports our conclusion that action by individual Federation bargaining unit members did not amount to an impermissible sympathy strike by their union.

The Federation's internal communications, as well as its communication to members, demonstrates that the Federation informed 10 bargaining unit members regarding the relevant contract language. Directing the interpreters' attention to contract language cannot amount to a repudiation of that language.

The nature of the Federation's actions here also defeats the Court's alternative theories that the Federation violated the Court Interpreter Act by allegedly calling for a strike without adequate notice, or calling for a sympathy strike in which, the Court claims, the Federation "stands in the shoes" of SEIU. We need not delve into the extent to which such alleged conduct by the Federation would or would not amount to an unlawful pressure tactic, because

we affirm the ALJ's well-supported factual conclusion that the Federation did not engage in such conduct and instead informed its members of the relevant contract language.

The Court has similarly failed to meet its burden of showing that the Federation called a sympathy strike that would imminently and substantially threaten the public health or safety within the meaning of *County Sanitation District No. 2 of Los Angeles County v. Los Angeles County Employees Association, Local 660* (1985) 38 Cal .3d 564 (*County Sanitation*). Under *County Sanitation*, for a strike to be found unlawful, it must be "'clearly demonstrated,' on a case-by-case basis, that [specific employees'] participation in a strike would create an imminent and substantial threat to public health and safety." (*Sacramento County Superior Court* (2015) PERB Order No. IR-59-C, p. 2 citing *County Sanitation*, *supra*, at pp. 586-587, emphasis omitted.) In determining whether an employer has met its burden, we consider, among other factors, the nature of the work and the extent to which supervisors, temporary employees, replacement workers, and others can perform the work on a temporary basis, as well as the duration of the strike. (*Sacramento County Superior Court*, *supra*, PERB Order No. IR-59-C., pp. 2-3.)

Even if we were to find that the Federation had called a strike, the Court fell far short of its burden under *County Sanitation*. At hearing, the Court called just two court employees. Munoz, a principal human resources analyst and the Court's chief negotiator at the time of the strike, testified his "area is only Human Resources" and he did not know how many courtrooms were scheduled to be in session or many specifics about the impact of interpreters not crossing the picket line. He testified that about 90 percent of the clerks represented by SEIU went on strike and did not know how many, let alone which, courtrooms were able to run without the clerks. He did not identify any courtrooms requiring an interpreter that were able

to run that day in the absence of the clerks. Not knowing many specifics, he could only speculate that some interpreters not coming to work could "potentially" affect some court functions.

Mark Culkins, a court administrator at the time of the strike, testified "we wouldn't assign an interpreter to a department if there was no Court in session that day" and did not identify any courtrooms that were in session with the clerks out on strike that needed an interpreter. He also acknowledged the Court had a pool of replacement workers available to staff court interpreter duties, even on same-day notice. He testified that only twelve to fifteen of the court's interpreters are employees. In addition to employees, "We have cross assigned interpreters from other jurisdictions and we also hire contracted interpreters from time to time, depending on the needs of the Court." He explained cross-assigned interpreters work in Alameda County or other counties in their Region and "if we need an assignment, we'll go to those Courts and ask for them to provide different types of interpreters depending on our need." In addition, the court has "access to contracted folks that they can call through either companies or agencies." The Court routinely uses cross-assigned interpreters or contractors, such as when an employee is sick, and cross-assigners and contractors are available for same-day absences. But the Court did not attempt to call in replacement workers for this one-day strike. In these circumstances, we need not reach the issue, raised by the Court's presentation at trial, of whether the Court had insufficient time to contact all of the agencies potentially capable of providing replacement interpreters and to document the extent to which each agency could provide such replacements. (*Sacramento County Superior Court*, *supra*, PERB Order No. IR-59-C, p. 3.)

ORDER

The unfair practice charge and complaint in Case No. SF-CO-1-I are hereby DISMISSED.

Members Banks and Krantz joined in this Decision.