

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SHASTA SECONDARY TEACHERS ASSOCIATION,
CTA/NEA,

Charging Party,

v.

LESTER D. JENSEN, JON K. ROBERTS,
ANNE O. SILVEIRA, PETER HOUTMAN,
DANNY ABBOTT, FRANCIS SPRINGER,
HENRY KRANTZ, CHARLES CRAWFORD,
KENNETH WAGNER, ROBERT WALKER,
RUAL ROSE, DAVID FRAZER, LYNETTE
ENGLERT, VIRGIL SMITH and
VICTOR VALDES,

Respondents.

Case No. S-CE-535

PERB Decision No. 284

February 14, 1983

Appearances; Kirsten L. Zerger, Attorney for Shasta Secondary Teachers Association, CTA/NEA.

Before Jaeger, Morgenstern and Burt, Members.

DECISION

JAEGER, Member: This case is before the Public Employment Relations Board (PERB or Board) pursuant to PERB regulation section 32635,¹ which provides for appeal of the general counsel's dismissal of a charge without leave to amend.

The Board has reviewed the entire record in this matter, including the attached general counsel's statement of reasons for the dismissal. Finding the general counsel's reasons for dismissal to be accurate and free from error, the Board affirms the dismissal of the charge for failure to state a prima facie case.

¹PERB regulations are codified at California Administrative Code, title 8, section 31001 et seq.

ORDER

After a review of the entire record in this case, the Public Employment Relations Board ORDERS that the unfair practice charge in Case No. S-CE-535 is hereby DISMISSED without leave to amend.

Members Morgenstern and Burt joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street, Suite 102
Sacramento, California 95314
(916)322-3198



November 5, 1982

Kirsten L. Zerger, Esq.
Attorney for Shasta Secondary Teachers
Association, CTA/NEA
P. O. Box 921
Burlingame, CA 94010

Re; Shasta Secondary Teachers Association v.
Lester D. Jensen, et al.
Charge No. S-CE-535

Dear Ms. Zerger:

I indicated to you in my letters dated October 22 and 27, 1982 that this charge, as amended, does not state a prima facie case and that unless you further amended the charge to state a prima facie case or withdrew it prior to November 3, 1982, it would be dismissed without leave to amend.

I have not received either an amended charge or a withdrawal from you and am therefore dismissing the charge, without leave to amend, for the following reasons.

The above-referenced charge alleges that Lester D. Jensen and 14 other individually named respondents have failed and refused to comply with the requirements of Article VI of the current collective bargaining agreement between the Shasta Secondary Teachers Association (Association) and the Shasta Union High School District (District) by refusing to join the Association or pay the required agency fee. This conduct is alleged to violate sections 3543.5(a) and (b) of the Educational Employment Relations Act (EERA).

In addition, the charge states that the respondents acted in an organized and concerted fashion to interfere with unit members' rights to be represented by the Association and with the Association's right to collect the agency fee. Such conduct is alleged to violate section 3543.6(b) of the EERA.

My investigation has revealed the following. Mr. Jensen and the other named respondents, during all times relevant to the charge, have been employees of the District and members of a bargaining unit exclusively represented by the Association. The Association and the District are parties to a collective bargaining agreement effective from July 1, 1981 to June 30, 1984. Under Article VI Section B of the Agreement, a unit member must either become a member of the Association or pay to the Association a representation fee as a condition of continued employment for the duration of the agreement. Section I(a) reads that the District's sole obligation under Article VI is to notify the unit member that as a condition of employment in the District s/he must become an Association member, pay the representation fee, or establish an exempt status and make payment accordingly. Subsection "a" also states that:

"[u]nder no circumstances shall the District be required to dismiss or otherwise discipline any unit member for failure to fulfill their obligations to pay the fees established herein."

Subsection "b" of Section I requires the Association to ". . . be solely responsible for requiring unit members to fulfill obligations defined herein."

During the fall of 1981, the Association notified Mr. Jensen and the other respondents of their responsibilities under Article VI of the collective bargaining agreement. Each respondent refused to pay the agency fee amount requested.¹ In April 1982, the Association filed suit in small claims court against the individual respondents as individuals. On July 14, 1982 the small claims court issued a decision which found the controversy within the jurisdiction of the Public Employment Relations Board (PER3) and required the actions to be abated until the PERB made a determination of the issues raised which are within its jurisdiction.

Based on the facts above, the charge does not state a prima facie violation of the EERA. The substance of the charge is

¹As discussed below, the respondents acted individually in refusing to pay agency fees. No facts suggest that the respondents are an "employee organization" as defined by the EERA.

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that Jensen and 14 other unit members failed and refused to comply with the requirements of Article VI of the collective bargaining agreement. It appears that charging party is asking the PERB to require the respondents to comply with the provisions of Article VI of the collective bargaining agreement. Section 3541.5 (b) of EERA provides:

The board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of such an agreement that would not also constitute an unfair practice under this chapter.

Therefore, unless respondents' conduct constitutes an unfair practice, it must be dismissed.

First, you have alleged that the respondents' conduct has violated EERA section 3543.5(a). Violation of that section require allegations that: (1) an employee has exercised rights under the EERA; (2) the employer has imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained, or coerced the employee because of the exercise of rights guaranteed by the EERA. Carlsbad Unified School District (1/30/79) PERB Decision No. 89; Novato Unified School District (4/30/82) PERB Decision No. 210.

Although it is unclear which employees have engaged in activities protected by the EERA, a more serious defect is evident on the face of this allegation. Section 3543.5(a) proscribes employer conduct, not that of employees. Thus, unless the respondents' action is attributable to the employer, there has been no employer conduct alleged. Antelope Valley Community College District (7/18/79) PERB Decision No. 97. ~~There are no facts alleged in the charge, nor were any facts discovered during the investigation which indicate that the respondents were acting on behalf of the employer. Thus, the charge does not state a prima facie violation of EERA section 3543.5(a).~~

Second, to state a prima facie violation of EERA section 3543.5(b) requires a showing that the employer has denied to an employee organization its rights guaranteed to it under the EERA. As discussed above, there are no facts which connect the

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action of the respondents to the District. Thus no prima facie violation of EERA section 3543.5(b) is presented by this charge.

To state a prima facie violation of section 3543.6(b) requires a showing that: (1) an employee has exercised rights under the EERA; (2) an employee organization has imposed or threatened to impose reprisals, discriminated or threatened to discriminate or otherwise interfered with, restrained, or coerced the employee because of the exercise of rights guaranteed by the EERA. Kimmett v. SEIU, Local 99 (10/19/79) PERB Decision No. 106, Novato Unified "School District (4/30/82) PERB Decision No. 210.

Although it is unclear which employees have engaged in activities protected by the EERA, two more serious defects are evident on the fact of this allegation. Section 3543.6(b) proscribes conduct by an employee organization. EERA section 3540.1(d) defines an employee organization as follows:

"Employee organization" means any organization which includes employees of a public school employer and which has as one of its primary purposes representing such employees in their relations with that public school employer. "Employee organization" shall also include any person such organization authorized to act on its behalf.

The PERB has found that a group of employees may have the status of an "employee organization" if it exists "... for the purpose of furthering the interests of employees by dealing with the employer on a matter of employer-employee relations." State of California (Department of Developmental Services) (7/28/82) PERB Decision No. 228-S. The facts discovered during the investigation indicate that Jensen and the other named respondents were acting as individuals and not as a group. The fact that they were all respondents in a law suit instituted by the charging party does not make these several individuals into a group. In addition, there were no facts alleged in the charge nor discovered during the investigation which would support a finding that the Respondents in this charge constitute a group whose purpose was dealing with the employer on a matter of employer-employee relations. Further, even assuming, arguendo, that the Respondents were an employee

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organization, there are no facts alleged in the charge nor discovered during the investigation that indicate how the Respondents' refusal to comply with Article VI of the collective bargaining agreement has interfered with, restrained or coerced other employees. Accordingly, no prima facie violation of EERA section 3543.6(b) with respect to unit members' rights is stated by this charge.

Charging party also alleges that the respondents "interfered with" the Association's right to collect the agency fee. Again, EERA section 3543.6(b) proscribes employee organization conduct and the charging party has not demonstrated that these individuals constitute an employee organization. Thus no prima facie violation of EERA section 3543.6(b) has been established.

For these reasons, charge number S-CE-535, as amended, does not state a prima facie case. Indeed, going beyond your allegations of violations of EERA section 3543.6(b), I conclude that the conduct alleged in the charge also does not appear to violate any other provision of the EERA. Rather, it merely involves allegations that individual employees did not meet their obligations under the negotiated agreement. PERB does not have jurisdiction to adjudicate such disputes, the proper forum being the courts of this state.

Pursuant to Public Employment Relations Board regulation section 32635 (California Administrative Code, title 8, part III), you may appeal the refusal to issue a complaint (dismissal) to the Board itself.

Right to Appeal

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 (section 32635(a)). To be timely filed, the original and five (5) copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) on November 25, 1982, or sent by telegraph or certified United States mail postmarked not later than November 25, 1982 (section 32135). The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

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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 (5) copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal (section 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 the document filed with the Board itself (see section 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.

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 (section 32132).

Final Date

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

Very truly yours,

DENNIS M. SULLIVAN
General Counsel

By

Robert Thompson
Regional Attorney