STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ROBERT RAY BRADLEY, Charging Party, v. LOS ANGELES COMMUNITY COLLEGE DISTRICT, Respondent.	)	Case No. LA-CE-2463 PERB Decision No. 623 June 17, 1987

Appearances; Robert R. Bradley, on his own behalf; Mary L. Dowell, Attorney, for Los Angeles Community College District.

Before Hesse, Chairperson; Porter, Craib and Shank, Members.

DECISION AND ORDER

This case is before the Public Employment Relations Board (Board) on appeal by Charging Party of the Board agent's dismissal, attached hereto, of his charge that the Los Angeles Community College District violated section 3543.5(a) of the Educational Employment Relations Act. We have reviewed the dismissal and, finding it to be free of prejudicial error, adopt it as the Decision of the Board itself.

The unfair practice charge in Case No. LA-CE-2463 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

By the BOARD

STATE Of CALIFORNIA GEORGE DEUKMEJIAN, *Governor*

PUBLIC EMPLOYMENT RELATIONS BOARD
LOS ANGELES REGIONAL OFFICE
3470 WILSHIRE BLVD., SUITE 1001
LOS ANGELES, CALIFORNIA 90010
(213) 736-3127

March 26, 1987

Robert R. Bradley

Re: LA-CE-2463, Robert R. Bradley v. Los Angeles Community College District
DISMISSAL OF UNFAIR PRACTICE CHARGE

Dear Mr. Bradley:

The above-referenced charge alleges that the Los Angeles Community College District (District) interfered with the Charging Party's right to representation in a grievance meeting and attempted to bypass the exclusive representative in order to obtain Charging Party's withdrawal of the grievance. It is also alleged that the District failed to meet and negotiate in good faith by directing the Charging Party to attend meetings concerning a merger of the Business Administration Department and the Office Administration Department, which the Charging Party contends constituted an unlawful unilateral change in terms and conditions of employment. This conduct is alleged to violate Government Code sections 3543.5(a), (b), and (c) of the Educational Employment Relations Act (EERA). By your letter dated March 3, 1987, you withdrew without prejudice the allegation concerning the merger.

I indicated to you in my attached letter dated March 19, 1987 that the above-referenced charge did not state a prima facie case. You were advised that if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge accordingly. You were further advised that unless you amended the charge to state a prima facie case, or withdrew it prior to March 26, 1987, it would be dismissed. The first amended charge was received on March 25, 1987.

The first amended charge contained no new facts. Although it states that Jean Loucks, the Vice President of Academic Affairs for the Respondent, suggested that you withdraw your grievance, you indicated to me in our telephone conversation on March 25, 1987, that this did not contradict the facts as stated in my previous letter of March 19, 1987, where I stated that Loucks did not ask you to withdraw the grievance.

The first amended charge did contain the legal argument that the District could show no operational necessity under the test set forth in Carlsbad Unified School District (1979) PERB Decision No. 89. However, that case held that in order for the charging party to show a prima facie case, it must first allege conduct which amounts to at least slight harm to its rights guaranteed by EERA. Since the District did not deprive the Charging Party of his right to representation, no harm has been alleged.

The first amended charge also contained the legal argument that Walnut Valley Unified School District (1981) PERB Decision No. 160 does not allow the District to ignore provisions of the Government Code and collective bargaining agreement. However, the Government Code and the collective bargaining agreement in this case allows, but does not require in every grievance meeting, that a representative be present. Therefore, the fact that the District discussed the grievance with the Charging Party in the absence of a representative is not a violation of EERA or the agreement.

It is also argued the District had no right to discuss the grievance with the Charging Party once he designated a representative on the grievance form. Since the Charging Party did not object to the conversation with Loucks because his representative was not present, the District did not deprive Charging Party of the right to have his designated representative present, and such presence was not mandatory.

There is further legal argument that the collective bargaining agreement is an unconscionable contract as defined by California Civil Code 1670.5. PERB's jurisdiction is limited to enforcing provisions of the Educational Employment Relations Act and not other statutory provisions. Government Code section 3541.3(i); Bracey v. Los Angeles Unified School District (1986) PERB Decision No. 588.

Finally, it is argued that there are facts alleged to indicate there is a collusive relationship between the District and the exclusive representative which necessitates your being "given the benefit of the doubt on all matters relating to my charge." No authority is cited why any of these facts should alter the manner in which the facts alleged are assessed in terms of whether a prima facie case has been stated. The Regional Attorney assumes that the facts as alleged are true

for purposes of this analysis. I have concluded that the facts as alleged do not state a prima facie case for the reasons stated in my letter of March 19, 1987 and I am aware of no legal authority requiring that facts concerning a "sweetheart" arrangement between the District and the exclusive representative be considered relevant in determining whether the elements of a prima facie case exist under the theories alleged in this case. I am therefore dismissing the charge based on the facts and reasons contained in my March 19, 1987 letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, 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 (California Administrative Code, title 8, section 32635(a)). To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.), or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. Code of Civil Procedure section 1013 shall apply. (See section 32135.) The Board's address is:

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

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 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 each copy of a document served upon a party or 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 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.

Sincerely,

JEFFREY SLOAN
General Counsel

By _____
Donn Ginoza
Regional Attorney

Attachment

cc: Mary Dowell

PUBLIC EMPLOYMENT RELATIONS BOARD
LOS ANGELES REGIONAL OFFICE
3470 WILSHIRE BLVD. SUITE 1001
LOS ANGELES, CALIFORNIA 90010
(213) 736-3127

March 19, 1987

Robert R. Bradley

Re: LA-CE-2463, Robert R. Bradley v. Los Angeles Community College District

Dear Mr. Bradley:

The above-referenced charge alleges that the Los Angeles Community College District (District) interfered with the Charging Party's right to representation in a grievance meeting and attempted to bypass the exclusive representative in order to obtain Charging Party's withdrawal of the grievance. It is also alleged that the District failed to meet and negotiate in good faith by directing the Charging Party to attend meetings concerning a merger of the Business Administration Department and the Office Administration Department, which you contend constituted an unlawful unilateral change in terms and conditions of employment. This conduct is alleged to violate Government Code sections 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA). By your letter dated March 3f 1987, you withdrew without prejudice the allegation concerning the merger.

My investigation revealed the following facts. Robert R. Bradley is employed as a professor in the Business Administration Department at the Pierce College campus of the Los Angeles Community College District. He is also chairperson of his department. On November 4, 1986, Bradley filed a grievance against the District alleging that the District was impermissibly withholding information pertinent to the merger of the two departments. He also alleged that the District was depriving him of his contractual right as the chairperson to represent his department during discussions concerning the merger. Specifically, he cited a letter dated October 22, 1986 from the Vice President of Academic Affairs at the Pierce College campus, Jean Loucks, stating that he was to recommend three faculty members, excluding himself, to participate in the meetings to discuss the merger.

Bradley obtained the grievance form for Step One of the grievance process from the offices of the exclusive representative, American Federation of Teachers, College Guild,

Local 1521, CFT/AFT, AFL/CIO. There is a place on the form to indicate the grievant's representative. In this place, Bradley listed three names, including Eloise Crippens, Kay Dunagan and Hal Fox. Although he did not indicate the name of the employee organization, he assumes that the District knew that these persons were officials in the union. Crippens is a campus representative responsible for processing grievances. Kay Dunagan is a district representative for the union. Hal Fox is the president of the union.

On November 12, 1986, Jean Loucks telephoned Bradley to discuss the grievance he had filed. Loucks stated that the October 22 letter she had written was not intended to indicate that Bradley would be excluded from the merger meetings, rather that he should indicate three faculty members in addition to himself to participate.

Bradley suspects that Loucks was employing a gambit to obtain his withdrawal of the grievance. She did not ask him to withdraw the grievance, but concluded the conversation by saying that she assumed that her explanation of the letter would resolve the grievance. She is alleged to have said, "If I don't hear from you, I will assume that the grievance is resolved." Loucks did not offer to discuss the allegation in the grievance concerning the withholding of information pertinent to the merger from the faculty -- a point of some significance in Bradley's view in relation to his theory of the attempt to bypass the exclusive representative. Bradley did not object to Loucks talking to him about the grievance in the absence of his representative. Bradley later sent a letter asserting that the grievance was not resolved. He did not object in this letter to his not having representation during the conversation.

The collective bargaining agreement between the District and the exclusive representative states at Article 28, section B.1, in pertinent part:

> The grievant may elect to be represented by the AFT at Step One or Two of the Grievance Procedure or may have the grievance adjusted without the intervention of the AFT so long as the adjustment is not inconsistent with the terms of this Agreement . . . The grievant and/or the grievant's representative may be present at all meetings. The representative as defined in this Article may present the case for the grievant or respondent or serve as an advisor.

The agreement also requires that a conference be held with the grievant at Step One following the submission of the grievance in writing. It states in pertinent part:

> The administrator or designee shall hold a conference with the grievant within five (5) working days after receipt of the grievance.

Based on the facts stated above, the allegation that the District interfered with Charging Party's right to be represented during the processing of a grievance fails to state a prima facie case for the reasons that follow.

Carlsbad Unified School District (1979) PERB Decision No. 89 held that a prima facie case for interference with employee rights guaranteed by EERA requires that the Charging Party establish that the employer's conduct tends to or does result in some harm to the employee's rights. The Board stated:

> Where the harm to the employees rights is slight and the employer offers justification based on operational necessity the competing rights of the employer and the rights of the employees will be balanced and the charge '' resolved accordingly. Id., at p. 10.

In this case, it does not appear that any harm has resulted from the District discussing the grievance with the Charging Party over the telephone without the presence of a representative. There has been no showing that the Charging Party demanded to have the representative present before any further discussions transpired. No showing has been made that the District persisted in discussing the grievance with the Charging Party over his objection, or that the District coerced the Charging Party to withdraw the grievance. In fact, the Charging Party did not withdraw the grievance and lost no rights concerning the grievance by the absence of a representative.

The Charging Party claims that the mere fact that the District designee telephoned him once he had designated the union constituted a violation. The contract does not require that the District meet with the grievant and the representative at the Step One conference. The Charging Party may elect to have the representative present, but may also elect not to have the representative present. If a grievant lists the union as the representative on the grievance, nothing in the contract denies him the right later to proceed without the representative. Therefore the Charging Party has failed to

show any harm resulted from the conversation supporting his allegation of interference.

The Charging Party also claims that the language at EERA section 3543, stating "once the employees in an appropriate unit have selected an exclusive representative and it has been recognized . . . no employee in that unit may meet and negotiate with the public school employer," requires that the employer deal only with the representative. There is no merit to this contention since the same statute provides that any employee may "at any time present grievances to his employer, and have such grievances adjusted, without the intervention of the exclusive representative." The latter provision relates to grievance processing, while the former pertains to the process of collective bargaining. Similarly, the Charging Party's claim that failing to deal with the exclusive representative violates EERA section 3543.5(c) is without merit because that section concerns illegal conduct within the context of the collective bargaining process. It only applies to the extent that the alleged conduct involves bypassing, as discussed below.

The Charging Party also contends that by discussing the grievance with him, the District bypassed the exclusive representative. In Walnut Valley Unified School District (1981) PERB Decision No. 160, the Board stated that to prove that the District has unlawfully bypassed the exclusive representative by "negotiating" directly with the employees "it must be demonstrated that the District sought either to create a new . . . policy of general application or to obtain a waiver or modification of an existing policy applicable to those employees." There are no facts alleged to suggest that the District was attempting to create a new policy of general application concerning the processing of grievances. The only possible theory is that the District was seeking to obtain a waiver of an existing policy. However, the District never requested that the Charging Party waive his right to representation. Since representation at Step One of the grievance procedure is not obligatory, the District was not necessarily attempting to obtain a waiver of a mandatory right.

For these reasons, the charge as presently written does not state a prima facie case. If you feel that there are any factual inaccuracies in this letter or any additional facts which would correct the deficiencies explained above, please amend the charge accordingly. 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 the Charging Party. The amended charge must be served on the Respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before March 26, 1987, I shall dismiss your charge. If you have any questions on how to proceed, please call me at (213) 736-3127.

Sincerely,

Donn Ginoza
Regional Attorney