STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

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| PATRICIA L. CLEGG, Charging Party, | ) | Case No. SF-CO-313 |
| v. | ) | PERB Decision No. 652 |
| CALIFORNIA TEACHERS ASSOCIATION, Respondent. | ) | December 30, 1987 |

Appearances; Patricia L. Clegg, on her own behalf; Diane Ross, Attorney, for California Teachers Association/National Education Association.

Before Hesse, Chairperson; Porter and Craib, Members.

DECISION

HESSE, Chairperson: Charging party appeals the dismissal of her unfair practice charge against the California Teachers Association (CTA) alleging that CTA is liable for alleged deficiencies in the collection procedures and amount of agency fees collected by the Cambrian District Teachers Association, a local chapter of CTA/National Education Association, in violation of the Educational Employment Relations Act (EERA), Government Code section 3543.6(b).[1]

[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

Section 3543.6(b) provides:

> It shall be unlawful for an employee organization to:

We concur with the regional attorney's analysis in the attached letter dismissing the charge for failure to state a prima facie case since CTA is not the exclusive representative of charging party's bargaining unit.

ORDER

The Public Employment Relations Board hereby ORDERS that the charges in Case No. SF-CO-313 are hereby DISMISSED without leave to amend.

Members Porter and Craib joined in this Decision.

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. . . . . .

(b) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

STATE OF CALIFORNIA GEORGE DEUKMEJIAN, Governor

**PUBLIC EMPLOYMENT RELATIONS BOARD**
**San Francisco Regional Office**
**177 Post Street Suite 900**
**San Francisco, California 94108**
**(415)557-1350**

**March 13, 1987**

Patricia L. Clegg

Diane Ross
Teachers Assn.
1705 Murchison Drive
Burlingame, CA. 94011-0921

Re: REFUSAL TO ISSUE COMPLAINT AND DISMISSAL OF UNFAIR PRACTICE CHARGE
Patricia L. Clegg v. California Teachers Association, Charge No. SF-CO-313

Dear Parties:

Pursuant to Public Employment Relations Board (PERB) Regulation section 32730, a complaint will not be issued in the above-referenced case and the pending charge is hereby dismissed because it fails to allege facts sufficient to state a prima facie violation of the Educational Employment Relations Act (EERA)).[1] The reasoning which underlies this decision follows.

On February 25, 1987 Patricia L. Clegg filed an unfair practice charge against the California Teachers Association (CTA) alleging violation of EERA section 3543.6(b). Mare specifically, charging party alleged that the CTA is jointly liable for alleged defects in the demand-and-return scheme provided by the Cambrian District Teachers Association (Association), the local chapter. These alleged defects are described as follows.

1. A portion of Ms. Clegg's monthly pay has been seized unlawfully from her by the District. She is an objecting agency fee payor and therefore she should have to pay no more than a certain percentage of membership dues. A certain portion of dues, by CTA's admission, is chargeable to political and ideological activities and therefore objectionable to Ms. Clegg. Yet the District deducts 100 percent of the membership dues from Ms. Clegg's paycheck. Despite her objection, the District continues to facilitate the full deduction of CTA dues from her monthly paycheck. The District is forcing her to extend an "involuntary loan" to CTA.

2. The method by which CTA determines that a certain portion of the monthly membership dues is attributable to political and ideological expenses is objectionable. The audit, while claiming to have been undertaken in accordance with generally accepted accounting standards, does not indicate that it complied with the Hudson decision. The itemization contained in the audit lacks the specificity required by Hudson.

3. CIA has failed to provide a reasonably prompt opportunity for Ms. Clegg to challenge' the amount of the deduction. CTA did not initiate a procedure in a prompt manner. Over nine months transpired between the effective date of Hudson and the arbitration hearing commenced in January 1987. The American Arbitration Association (MA) is not an impartial decision-maker. It was selected by CTA unilaterally. Agency fee objectors were not part of the selection process. The AAA hearing does not present a reasonable opportunity to object to the agency fee amount. The hearing was conducted at the headquarters of the statewide CTA in Burlingame, California, during school hours over a period of six days, and was set at a tins and date that could not be changed by any of the objectors. Charging party has no reliable way to verify whether the arbitrator selected by AAA is competent and impartial. CTA unilaterally selected the arbitrator from a list created by AAA.

4. CTA did not provide escrow for amounts reasonably in dispute during the period that the deduction was being challenged. The escrow account, if it exists, is solely controlled by CTA and therefore not in compliance with Hudson. Charging party's requests for information about the escrow account have come to naught. Be has not been told the names, location or identity of those responsible for the account.

On March 2, 1987 the regional attorney wrote a letter to charging party explaining that the allegations in the original unfair practice charge insufficient to support a prim facie violation of EEEA sections 3543.6(b) and 3544.9. The letter, attached and incorporated by reference, warned that unless the allegations were withdrawn or amended, they would be dismissed on March 13, 1987. On March 13, 1987 the regional attorney spoke with charging party concerning the warning letter. She conceded that she had received the letter and resolved not to withdraw or amend the charge. Accordingly, for the reasons set forth in the warning letter referred to above, as well as this letter, the allegations are hereby dismissed. No complaint will issue thereon.

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 nay 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 Notice (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.) or sent by telegraph or certified or Express United States mail postmarked not later than the last date set for filing. Code of Civil Procedure section 1013 shall apply. 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 (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 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 (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 specific time limits, the dismissal will become final when the time limits have expired.

Very truly yours,

JEFFREY SLOAN
General Counsel

By
PETER HABERFELD
Regional Attorney

cc: General Counsel

**PUBLIC EMPLOYMENT RELATIONS BOARD**
**San Francisco Regional Office**
**177 Post Street, Suite 900**
**San Francisco, California 94108**
**(415)557-1350**

March 2, 1987

Patricia L. Clegg

RE: Patricia L. Clegg v. California Teachers Association, Charge No. SF-CO-313

Dear Ms. Clegg:t

On February 25, 1987 Patricia L. Clegg filed an unfair practice charge the California Teachers Association (CTA) alleging violation of EERA section 3543.6(b). More specifically, charging party alleged that the CTA is jointly liable for alleged defects in the demand-and-return scheme provided by the Cambrian District Teachers Association (Association), the local chapter. These alleged defects are described as follows.

1. A portion of Ms. Clegg's monthly pay has been seized unlawfully from her by the District. She is an objecting agency fee payor and therefore she should have to pay no more than a certain percentage of membership dues. A certain portion of dues, by CTA's admission, is chargeable to political and ideological activities and therefore objectionable to Ms, Clegg. Yet the District deducts 100 percent of the membership dues from Ms. Clegg's paycheck. Despite her objection, the District continues to facilitate the full deduction of CTA dues from her monthly paycheck. The District is forcing her to extend an "involuntary loan" to CTA.

2. The method by which CTA determines that a certain portion of the monthly membership dues is attributable to political and ideological expenses *is* objectionable. The audit, while claiming to have been undertaken in accordance with generally accepted accounting standards, does not indicate that it complied with the Hudson decision. The itemization contained in the audit lacks the specificity required by Hudson.

3. CTA has failed to provide a reasonably prompt opportunity for Ms. Clegg to challenge the amount of the deduction. CTA did not initiate a procedure in a prompt manner. Over nine months transpired between the effective date of Hudson and the arbitration hearing commenced in January 1987. The American Arbitration Association (AAA) is not an impartial decision-maker. It was selected by CTA unilaterally. Agency fee objectors were not part of the selection process. The AAA hearing does not present a reasonable opportunity to object to the agency fee amount. The hearing was conducted at the headquarters of the statewide CTA in Burlingame, California, during school hours over a period of six days, and was set at a time and date that could not be changed by any of the objectors. Charging party has no reliable way to verify whether the arbitrator selected by AAA is competent and impartial. CTA unilaterally selected the arbitrator from a list created by AAA.

4. CIA did not provide escrow for amounts reasonably in dispute during the period that the deduction was being challenged. The escrow account, if it exists, is solely controlled by CTA and therefore not in compliance with Hudson. Charging party's requests for information about the escrow account have come to naught. He has not been told the names* location or identity *at* those responsible for the account.

Investigation of the charge revealed the following. The collective bargaining agreement between the Cambrian School District and the Cambrian District Associated Teachers (Association) contains an organizational security provision which require that members are to have their dues deducted by the District for the duration of the agreement. Further, any member of the unit who is not a member of the Association must authorize payroll deduction or make payment to the Association of a service fee equivalent to unified membership dues, initiation fees and general assessments. If such individual does not authorize payroll deduction of the service fee or make payment directly to the Association, the District, upon written request from the Association, shall begin payroll deduction of the service fee.

PERB records show that the CTA is a statewide organization with which the Association is affiliated, and only the Association is the exclusive representative of District certificated employees. The Association pays CTA a portion of its dues in return for services.

In Link et al. v. Antioch Unified School District, et al, (1985) PERB Order No. IR-47, the Board examined the exclusive representative's demand-and-return system, and determined that the procedural protections made available to objecting fee-pavors were sufficient to meet EERA, standards, even though they did not require that the entire amount of the agency fee be escrowed pending the exclusive representative's determination and reimbursement of the amount attributable to political/ideological expenses.[1] Subsequent to PERB's decision in Link, the U.S. Supreme Court issued its decision in Chicago Teachers Union v. Hudson (1986) 106 S.Ct. 1066 [121 LRRM 27933. Hudson held that the exclusive representative is constitutionally required to provider an

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[1]There, as here, the exclusive representative was affiliated with statewide California Teachers Association (CTA) and National Education Association (NEA). Many aspects of the demand-and-return system were provided by statewide CTA to the local chapter and to CTA chapters throughout the state. The escrow account, for example, was administered at the state level and contained a sum intended to protect all objectors in the state.

adequate explanation of the basis for the fee, a reasonably prompt opportunity to challenge the amount of the fee before an impartial decision-maker, and an escrow for the amounts reasonably in dispute while such challenges are pending.

In Fresno Unified School District (1962) PERB Decision No. 208, and Washington Unified School District (1985) PERB Decision No. 549, PERB held that more affiliation by the exclusive representative with the statewide organization (such as *CSU)* is insufficient to make the statewide organization the exclusive representative and "hence, it was not liable for a violation of EERA." Also see Link v. California Teachers Association and National Education Association (1981) PERB Order No. Ad-123.

The charge, as written, fails to state a prima facie violation of EERA. Only the exclusive representative is required to provide the procedural protections discussed above. CTA is not the exclusive representative, and therefore is not obliged to provide the Hudson-type procedural requirements. Having no such obligation under EERA, CTA is not an appropriate a party to this action.

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. (1) The amended charge should be prepared on a standard PERB unfair practice charge form clearly labeled First Amended Charge, (2) contain all the facts and allegations you wish to make, (3) indicate the case number where indicated on the form (even though you are not to write in the box when originally filing a charge), (4) and be signed under penalty of perjury by the charging party (forms enclosed). The amended charge must be served on the respondent, and proof of service must be attached to the original as well as to all copies of the amended charge (forms enclosed).

If I do not receive an amended charge or withdrawal from you on or before March 13, 1987, I shall dismiss your charge. If you have any questions on how to proceed, please call me at (415) 557-1350.

Sincerely yours.

Peter Haberfeld
Regional Attorney

Enclosure