STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA STATE UNIVERSITY,	)	
	)	
Charging Party,	)	Case No. LA-CO-27-H
	)	
v.	)	PERB Decision No. 793-H
	)	
CALIFORNIA FACULTY ASSOCIATION,	)	February 16, 1990
	)	
Respondent.	)	
	)	

Appearances: William B. Haughton, Attorney, for California State University; Edward R. Purcell, General Manager, for California Faculty Association.

Before Craib, Shank, and Camilli, Members.

DECISION

SHANK, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the California State University (CSU or University) of the Board agent's dismissal of its unfair practice charge against the California Faculty Association (CFA or Association) for failure to state a prima facie case. The University alleged that the Association violated the Higher Education Employer-Employee Relations Act (HEERA) section 3571.1 (c) and (d)[1] by making a factfinding report public

[1]HEERA is codified at Government Code section 3560 et seq. Unless otherwise indicated, all statutory references are to the Government Code. Section 3571.1 states, in pertinent part:

> It shall be unlawful for an employee organization to:
>
> . . . . . .
>
> (c) Refuse or fail to engage in meeting and conferring with the higher education employer.

prior to the expiration of the ten-day confidentiality period provided by HEERA section 3593.[2] The Association released a copy of the factfinding report, selected quotes from the report, and a memorandum to members of CSU's Board of Trustees (Trustees) and each of CSU's 19 campus presidents. The University further alleged that the Association, by issuing the memorandum, bypassed and undermined the authority of CSU's designated negotiators.

Having reviewed the entire record, we affirm the dismissal of the charge for the reasons set forth below.

BACKGROUND

On June 6, 1988, CSU filed a Request for Impasse Determination with PERB, stating that CSU and CFA were at impasse over the impact of CSU's decision to increase parking fees. PERB

> (d) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3590).

[2]Section 3593 states, in pertinent part:

> If the dispute is not settled within 30 days after the appointment of the panel, or, upon agreement by both parties, within a longer period, the panel shall make findings of fact and recommend terms of settlement, which recommendations shall be advisory only. Any findings of fact and recommended terms of settlement shall be submitted in writing to the parties privately before they are made public. The panel, subject to the rules and regulations of the board, may make such findings and recommendations public 10 days thereafter. During this 10-day period, the parties are prohibited from making the panel's findings and recommendations public. . . .
> (Emphasis added.)

determined the existence of an impasse on June 30, 1988, and appointed a mediator. The matter was submitted to factfinding, and, on June 20, 1989, a factfinding panel issued a report. The factfinding panel member appointed by CSU wrote a dissent to the factfinding report.

On June 28, 1989, CFA sent a copy of the factfinding report, dissent, selected quotes from the report, and a memorandum written by CFA's panel member to each of the University's Trustees and 19 campus presidents.

CSU filed an unfair practice charge with PERB on July 28, 1989, alleging that CFA prematurely made public a factfinding report and bypassed and undermined CSU's designated negotiators in violation of HEERA section 3571.1(c).

The Board agent, by letter dated October 13, 1989, replied to CSU's initial charge. The Board agent stated that:

> Government Code section 3593, however, only prohibits making a factfinding report "public" during the 10-day period. It is not alleged that CFA's action, in intent or effect, made the report available to the public at large. It is only alleged that CFA sent the report to CSU's Trustees and campus Presidents. Under Government Code section 3562(h), the Trustees are defined to be the "employer" and therefore one of the actual parties to the impasse proceeding. The campus Presidents are evidently top managerial employees of CSU, who presumably have a confidential relationship with the Trustees. Information given to the Trustees and the campus Presidents would therefore not appear to be "public." Furthermore, if the Trustees and the campus Presidents were regarded as the "public," then CSU itself could not share the factfinding report with them during the 10-day period. It seems

> unlikely that this was the intent of Government Code section 3593.

As to CSU's allegation that CFA's memorandum undermined the authority of CSU's designated negotiators, the Board agent stated:

> It is not alleged that CFA engaged in such a campaign to undermine and remove CSU's negotiators. All that appears is that CFA criticized the dissent from the factfinding report and urged CSU "to engage in serious reconsideration of its positions and conduct in the parking fee dispute." This does not rise to the level of a Safeway Trails[3] case.

On October 25, 1989, the University filed a first amended charge. CSU alleged that the trustees have fully delegated complete authority on all matters connected with collective bargaining to their Committee on Collective Bargaining and CFA had full knowledge of such delegation. The University further alleged that its 19 campus presidents have no authority or responsibility with respect to collective bargaining matters. Therefore, the University contends that the issuance of the factfinding report and other documents to CSU's Trustees and campus presidents who are not members of the Committee on Collective Bargaining constitutes making the factfinding report public.

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[3] The Board agent cited Safeway Trails, Inc. (1977) 233 NLRB 1078 [96 LRRM 1614] and Westminster School District (1982) PERB Decision No. 277 in his analysis regarding CSU's allegation that CFA undermined the authority of its designated negotiators.

The Board agent replied to the first amended charge by letter dated November 6, 1989, stating that the legal conclusion in CSU's charge was not justified by the factual allegations contained therein. The Board agent defined the word "public" as "known by, or open to the knowledge of, all or most people." Inasmuch as there was no allegation that CFA made the factfinding report "public," in the ordinary sense, the Board agent dismissed the charge based on the facts and the reasons set forth in the October 13, 1989 letter.

THE APPEAL

The University concedes on appeal that the Trustees are parties and, thus, no violation occurred as a result of CFA sending copies of the factfinding report to individual trustees. The University, however, appeals the dismissal on the grounds that the Board agent misinterpreted and misapplied the word "public" as it is used in section 3593 of HEERA. The University alleges that the 19 campus presidents are neither parties nor agents of management for purposes of the factfinding proceedings. Therefore, the University contends that, although the presidents are employees of CSU, they are also members of the "public" as that word is used in the context of section 3593.

The Association filed a statement in opposition to the University's appeal pursuant to PERB Regulation 32635(c), stating that the Board agent correctly found that the University failed to state a prima facie case.

DISCUSSION

The only issue before the Board is whether the Association, by sending copies of the factfinding report to the University's 19 campus presidents during the 10-day period contained in EERA section 3593, made the factfinding report "public."

The University argues that the word "public" has more than one ordinary meaning and pointed out that one meaning is used to distinguish the word "private." The University contends that, since section 3593 states that the factfinding report "be submitted to the parties privately" before being made public, the Legislature intended absolute confidentiality or secrecy during the 10-day period. Therefore, the University argues that, in this instance, the word "public" means any member of the public. While the Board has not specifically defined what constitutes making a factfinding report "public," the Board has found that a factfinding report was made public when a district circulated significant portions of the report to certificated employees (Las Virgenes Unified School District (1979) PERB Order No. IR-8) and when portions of the report were read to a local newspaper reporter (Capistrano Unified School District (1983) PERB Decision No. 294).

The "parties," in the instance case, are the University (employer) and the Association (exclusive representative). The "Employer" is defined in section 3562(h) as the trustees of the California State University, including any person acting as an agent of an employer. There can be no dispute that a university

is "managed" through a hierarchy of officials and officers whose function it is to effectuate its policies and programs. The Legislature contemplated this chain of authority by its inclusion of the word "agent" in the definition of employer. The Board has held that school principals and assistant superintendents are agents of school districts. (Santa Clara Unified School District (1979) PERB Decision No. 104.) Since campus presidents must, at a minimum, effectuate the policies and programs of the Trustees, we find them to be agents of the employer.[4]

For the above-stated reasons, we agree with the Board agent that information given to the campus presidents was not made public within the meaning of section 3593 of HEERA. Therefore, we affirm the Board agent's dismissal of the unfair practice charge for failure to state a prima facie case.

ORDER

The unfair practice charge in Case No. LA-CO-27-H is hereby DISMISSED.

Members Craib and Camilli joined in this Decision.

[4]The University also argues that because its presidents "have no authority or responsibility with respect to collective bargaining matters," they are not agents of the University for purposes of the factfinding report. Section 3593 does not define "party" to include only those who actively participate in the collective bargaining process. We, therefore, reject this argument.