

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LUIS ALONSO ALVAREZ,)
)
 Charging Party,) Case No. SF-CE-346-H
)
 v.) PERB Decision No. 983-H
)
 REGENTS OF THE UNIVERSITY OF) March 22, 1993
 CALIFORNIA,)
)
 Respondent.)
 _____)

Appearances: Mary G. Higgins, for Luis Alonso Alvarez; Edward M. Opton, Jr., University Counsel, for Regents of the University of California.

Before Blair, Chair; Hesse and Caffrey, Members.

DECISION AND ORDER

BLAIR, Chair: This case is before the Public Employment Relations Board (Board) on an appeal filed by Luis Alonso Alvarez (Alvarez), to the Board agent's dismissal (attached hereto) of his unfair practice charge. The charge alleged that the Regents of the University of California violated sections 3571(b), 3571.1(e), 3578 and 3579 of the Higher Education Employer-Employee Relations Act (HEERA)¹ by negotiating and reaching

¹HEERA is codified at Government Code section 3560 et seq. Unless otherwise indicated, all statutory references are to the Government Code. Section 3571 states, in pertinent part:

It shall be unlawful for the higher education employer to do any of the following:

(b) Deny to employee organizations rights guaranteed to them by this chapter.

Section 3571.1 provides, in relevant part:

It shall be unlawful for an employee

agreement with the American Federation of State, County and Municipal Employees, Council 10 (AFSCME), exclusive representative for the systemwide clerical and patient care technical bargaining units, to transfer certain job classifications (classes) from the clerical to the patient care technical unit. Alvarez is an Admitting Worker, one of the classes transferred.

The Board has reviewed the entire record in this case de novo² and, finding the dismissal to be free of prejudicial error, adopts it as the decision of the Board itself.³

organization to:

(e) Fail to represent fairly and impartially all the employees in the unit for which it is the exclusive representative.

Section 3578 provides:

The employee organization recognized or certified as the exclusive representative shall represent all employees in the unit, fairly and impartially. A breach of this duty shall be deemed to have occurred if the employee organization's conduct in representation is arbitrary, discriminatory, or in bad faith.

Section 3579 states, in relevant part:

(a) In each case where the appropriateness of a unit is an issue, in determining an appropriate unit, the board shall take into consideration all of the following criteria: [criteria omitted].

²The substantive record consists of the warning and dismissal letters, charge, amended charge, appeal with attachment and opposition to appeal.

³Alvarez has also filed charges of unlawful conduct (HEERA, secs. 3578 and 3571.1(e)) against AFSCME (Case No. SF-CO-24-H).

The unfair practice charge in Case No. SF-CE-346-H is hereby
DISMISSED WITHOUT LEAVE TO AMEND.

Members Hesse and Caffrey joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
177 Post Street, Suite 900
San Francisco, CA 94108-4737
(415) 557-1350



October 1, 1992

Mary G. Higgins

Re: DISMISSAL OF UNFAIR PRACTICE CHARGE/REFUSAL TO ISSUE
COMPLAINT
Luis Alonzo Alvarez v. The Regents of the University of
California. Unfair Practice Charge No. SF-CE-346-H

The above-referenced unfair practice charge, filed on June 2, 1992, alleges that the Regents of the University of California (Regents) agreed to the transfer of classifications from the Clerical bargaining unit to the Patient Care Technical bargaining unit. This conduct is alleged to violate Government Code sections 3571(b) and 3579 of the Higher Education Employer-Employee Relations Act (HEERA).

I indicated to you in my attached letter dated August 26, 1992, 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. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to September 3, 1992, the charge would be dismissed. I subsequently granted you extensions of time to file an amended charge.

On September 30, 1992, you filed an amended charge which states that Mr. Alvarez believes that he has been disadvantaged by the transfer of his classification to the Patient Care Technical bargaining unit, and identifies specific contract provisions which purport to confirm his perception. The amended charge concludes by reiterating your contention that the harm to the wages and working conditions of Mr. Alvarez is the result of collusion between AFSCME and the Regents.

The issue of whether Mr. Alvarez was disadvantaged by the transfer of his classification was not a matter which required additional facts. No facts whatsoever were provided in support of the allegation of collusion, nor were any facts or argument submitted addressing the deficiencies noted in the warning letter.

Therefore, I am dismissing the charge based on the facts and reasons contained in my August 26, 1992, letter and the reasons set forth above.

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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. (Cal. Code of Regs., tit. 8, sec. 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 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. (Cal. Code of Regs., tit. 8, sec. 32135.) 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 copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Cal. Code of Regs., tit. 8, sec. 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 Cal. Code of Regs., tit. 8, sec. 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. (Cal. Code of Regs., tit. 8, sec. 32132.)

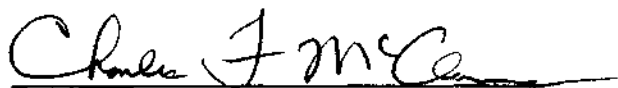
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Final Date

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

Sincerely,

ROBERT THOMPSON
Deputy General Counsel

By 
CHARLES F. McCLAMMA
Public Employment Relations Specialist

Attachment

cc: James Odell

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
177 Post Street, Suite 900
San Francisco, CA 94108-4737
(415) 557-1350



August 26, 1992

Mary G. Higgins

Re: WARNING LETTER

Luis Alonzo Alvarez v. The Regents of the University of California. Unfair Practice Charge No. SF-CE-346-H

Dear Ms. Higgins:

The above-referenced unfair practice charge, filed on June 2, 1992, alleges that the Regents of the University of California (Regents) agreed to the transfer of classifications from the Clerical bargaining unit to the Patient Care Technical bargaining unit. This conduct is alleged to violate Government Code sections 3571(b) and 3579 of the Higher Education Employer-Employee Relations Act (HEERA).

My investigation revealed the following facts. Luis Alonzo Alvarez is employed by the Regents at the University of California at San Francisco as an admitting worker. His job duties are predominantly clerical in nature, although he has contact with hospital patients in the performance of these duties.

On July 11, 1983, the American Federation of State, County and Municipal Employees (AFSCME) was certified by PERB as the exclusive representative of employees of the Regents in Unit #13 (Patient Care Technical). On July 12, 1983, AFSCME was also certified by PERB as the exclusive representative of employees of the Regents in Unit #12 (Clerical and Allied Services). Employees in the classification of admitting worker were included in Unit #12.

On April 30, 1992, AFSCME, through the Executive Director of AFSCME Council 10, concluded collective bargaining negotiations with the Regents. A part of their tentative agreement provided for the transfer of certain classifications, including that of admitting worker, from Unit #12 to Unit #13. Members of Unit #12 were neither consulted with, nor allowed to participate in the process which led to the agreement to transfer classifications. A ratification vote on the tentative agreement was scheduled for May 26, 1992, in which only AFSCME members within Unit #13 were allowed to vote.

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On June 9, 1992, AFSCME Council 10 filed a unit modification petition with PERB seeking approval of the aforementioned transfer. The Regents concurred in the request. Therefore, on June 9, 1992, the Regional Director of the PERB San Francisco Regional Office issued a Unit Modification Order approving the deletion of the identified classifications from the Clerical and Allied Services Unit and their addition to the Patient Care Technical Unit.

Based on the facts stated above, the charge as presently written fails to state a prima facie violation of the HEERA for the reasons that follow.

In Hanford Joint Union School District (1978) PERB Decision No. 58, the Board noted that, although the right to file an unfair practice- charge extends to any employee, employee organization, or employer, the specific grounds which can be alleged are limited. The Board went on to hold that a nonexclusive employee organization may not file a section 3543.5(c)¹ charge because to do so would interfere with the right of the exclusive representative to determine matters on which it decides to negotiate.

In Oxnard School District (1988) PERB Decision No. 667, the Board extended the reasoning in Hanford to such claims filed by individual employees as well. However, it went on to note the following:

We emphasize that nothing in our decision today shall be construed to limit the ability of employees to pursue unfair practice charges which assert individual rights under the Act.

Mr. Alvarez alleges that the District violated Government Code section 3571(b), which prohibits the denial "to employee organizations rights guaranteed them by this chapter." On its face, this provision provides a cause of action to employee

¹This subsection of the Government Code provides as follows:

It shall be unlawful for a public school employer to do any of the following:

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

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organizations for a denial of rights granted to an employee organization. However, it does not provide a cause of action to an individual employee. To extend the right to an individual in a case such as this would lead to the same kind of interference which the Board sought to avoid in Hanford and Oxnard, namely, interference with the right of an exclusive representative (in this case, AFSCME) to determine matters on which it chooses to negotiate.

However, as suggested by the Board in Hanford, Mr. Alvarez does have the right to assert his individual rights. In this case, he has alleged that the Regents have interfered with his rights by failing to allow him to vote or otherwise to consult with him concerning whether he wished his classification to be transferred to another bargaining unit. He alleges that the Regents have violated Government Code section 3579 (HEERA Article 6. Unit Determinations), noting that the HEERA directs PERB to resolve cases where the appropriateness of a unit is an issue.

In order to state a violation involving interference, the charging party must demonstrate that the employer, by its conduct, has caused at least slight harm to the guaranteed rights of the employee. (Carlsbad Unified School District (1978) PERB Dec. No. 89.) The rights which Mr. Alvarez alleges have been denied him by the **Regents, namely**, the right to vote and to be consulted concerning the unit transfer of a classification, are not rights that are granted to an employee by HEERA, and therefore, they are not rights which could have been harmed or denied by the Regents. Further, HEERA section 3579 imposes no duty upon an employer, but rather imposes on PERB the duty to consider the criteria listed in that section in determining an appropriate unit. Such consideration by PERB occurs only when raised as an issue by a party to a PERB proceeding.

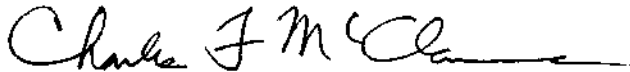
PERB, through its regulations governing unit modifications (sections 32781 through 32786), has established procedures for either an employer or an exclusive representative to raise unit appropriateness issues involving changes to existing bargaining units. However, a petition for unit modification may only be filed by an employer or an exclusive representative, or both, and need not be filed at all if they are in agreement. (PERB Regulation 32781.) An individual employee does not have standing to file a unit modification petition (Riverside Unified School District (1985) PERB Order No. Ad-148.), and cannot attempt to accomplish the same result by filing an unfair practice charge. (Riverside Unified School District (1985) PERB Dec. No. 512.)

For these reasons the charge as presently written does not state a prima facie case. If there are any factual inaccuracies in

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this letter or any additional facts that 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 must 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 filed with PERB. If I do not receive an amended charge or withdrawal from you before September 3, 1992, I shall dismiss this charge. If you have any questions, please call me at (415) 557-1350.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles F. McClamma". The signature is written in dark ink and extends across the width of the page.

CHARLES F. MCCLAMMA
Public Employment Relations Specialist