

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



STATE EMPLOYEES TRADES COUNCIL
UNITED,

Charging Party,

v.

TRUSTEES OF THE CALIFORNIA STATE
UNIVERSITY (STANISLAUS),

Respondent.

Case No. LA-CE-666-H

PERB Decision No. 1659-H

July 13, 2004

Appearances: Law Offices of James Eggleston by M. Jane Lawhon, Attorney, for State Employees Trades Council United; Elisabeth Sheh Walter, University Counsel, for Trustees of the California State University (Stanislaus).

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by State Employees Trades Council United (SETC)¹ of a Board agent's partial dismissal (attached). The charge alleged that the Trustees of the California State University (Stanislaus) (CSU) violated the Higher Education Employer-Employee Relations Act (HEERA)² when it unilaterally laid off Unit 6 employees at the CSU Stockton Center without meeting and conferring with SETC, by transferring bargaining unit work from Unit 6 to the newly created Stockton Center Site Authority, by failing to provide information relevant to representation by its members, and by discriminating against Unit 6 members.

¹The charge was originally filed by the State Employees Trades Council. In the amended charge, SETC changed its name to State Employees Trades Council United.

²HEERA is codified at Government Code section 3560, et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

SETC alleged that this conduct constituted a violation of HEERA sections 3570 and 3571(a), (b), (c) and (d).

After review of the record, including the unfair practice charge, amended charge, CSU's response, the Board agent's warning and dismissal letters, SETC's appeal and CSU's response to the appeal³, the Board affirms the Board agent's partial dismissal and partial placement in abeyance and deferral of the charge to arbitration, consistent with the discussion below.

BACKGROUND

The charge alleges that CSU Stanislaus (CSUS) has a satellite facility in Stockton known as the CSU Stockton Center. In July 2000, the parties executed a settlement agreement resolving a grievance filed by SETC on behalf of Unit 6 employees.

The settlement agreement provides, in pertinent part:

2. The University agrees to hire temporary Unit 6 personnel to operate and maintain CSU-Stanislaus, Stockton site only, for the remaining period that it has operating authority for the entire site or until the central plant is eliminated, whichever is sooner. Temporary employees shall be hired under this agreement.

6. The parties acknowledge that within the next approximately 24-months that the CSU will not have operating authority over the entire Stockton site, but may retain a reduced scope of operating authority over that portion of the Stockton site devoted to CSU's occupancy. The SETC Agreement shall apply to the performance of work within the scope of Unit 6 work under the Agreement with respect to all such facilities that are within the scope of CSU's reduced occupancy for the Stockton site.

7. The parties agree that the obligations of this agreement apply to CSU and not to any other person or entity that may assume some or all of the operating authority for some portion or all of the Stockton site independent of any CSU operating authority.

³Pursuant to PERB Regulation 32136, the Board hereby accepts CSU's late-filed response as timely filed. (PERB regs. are codified at Cal. Code Regs., tit. 8, sec. 31001, et seq.)

Under the settlement agreement, CSU hired approximately ten temporary Unit 6 employees to work at the CSU Stockton Center to perform Unit 6 work. Each employee was provided a letter from the CSU Human Resources Director in September or October 2001 that notified each individual of his/her employment as an operating engineer. Each letter showed an expiration date for the appointment between February 28, 2002 and June 30, 2002.

In May 2001, the CSU Board of Trustees and the City of Stockton (City) established a joint powers authority (Authority) to oversee redevelopment of the Stockton site. The joint powers agreement provided, in pertinent part:

2. Site Authority Created. There is hereby created a public entity to be known as the 'Stockton Center Site Authority.' The Site Authority is formed by this Agreement pursuant to the provisions of articles 1-4, chapter 5, division 7, title 1 of the Government Code of the State of California. The Site Authority shall be a public entity separate from the Parties hereto and shall administer this Agreement.

10. Governing Body of the Site Authority.

a. The business of the Site Authority shall be conducted by a Board of Directors consisting of seven (7) persons. All voting power of the Site Authority shall reside in the Board of Directors. The Board shall be comprised as follows: three (3) Stockton City Councilmembers appointed by the City, three (3) members appointed by the Chancellor of the California State University, and one (1) member jointly appointed by the Mayor of the City of Stockton and Chancellor of the California State University.

The Board of Directors was selected pursuant to the joint powers agreement. CSU Assistant Vice Chancellor, Patrick Drohan (Drohan), was appointed as the Executive Director of the Authority, CSU General Counsel, Elisabeth Sheh Walter, as the attorney, and the City clerk, as the Authority's secretary.

SETC alleges that it was unaware of the establishment of the Authority until October 2001 when rumors began to circulate of the possibility of layoffs of Unit 6 employees. In

October and November 2001, SETC Representative Greg Starr (Starr) discussed the layoffs with CSU representatives. On December 3, 2001, Starr sent to CSU Human Resources Director, Mary Kobayashi-Lee (Kobayashi-Lee) a memorandum requesting that CSU meet with SETC representatives to discuss the Stockton site Unit 6 employees. On December 14, 2001, the parties met. During this meeting, CSU presented SETC with copies of notices that the appointment of eight Unit 6 employees would end January 15, 2002. SETC characterizes these notices as layoff notices. The notices stated, in part:

This letter is official notification that your temporary appointment as a Facilities Maintenance Mechanic will be ending on January 15, 2002.

SETC requested that CSU delay the layoffs and requested bargaining over the effect of the layoffs.

On December 20, SETC filed a grievance on behalf of the eight Unit 6 employees. The grievance alleges that CSU violated, among others, sections 3, 5, 6, 7, 8, 9 of the July 2000 settlement agreement. In addition, the grievance specifically alleges that CSU violated Article 4 of the collective bargaining agreement (CBA) regarding contracting out unit work. The grievance also alleges that CSU violated several other articles of the CBA but does not explain how these articles were violated.

On December 21, 2001, Kobayashi-Lee sent SETC a letter that stated that the appointments of an undetermined number of Unit 6 employees would be extended through April 2002. Two Unit 6 employees continued to work for CSU until April 2002.

On February 4, 2002, the parties met to discuss the grievance which had proceeded to Level III but did not achieve resolution. SETC has requested information from CSU regarding these grievances on numerous occasions.

Since the Unit 6 employees' temporary assignments ended, two of the employees have gone to work for the Authority performing the same duties they had performed when employed by CSU.

Information Requests

CBA sections 7.11, 9.20, 13.1 and 13.2 allow SETC and/or the employee to obtain information from CSU for purposes of bargaining, grievances and personnel matters, respectively.

From October 2001 through May 2002, SETC requested information from CSU regarding, in pertinent part, the layoffs of the Unit 6 employees, the relationship between CSU and the Authority, as well as the decision by CSU to retain two Unit 6 employees until April 2002. While CSU provided SETC with some of the requested information, CSU Representative Kobayashi-Lee informed SETC that because CSU and the Authority had a landlord-tenant relationship, much of the information should be requested directly from the Authority, as the landlord.

On December 20, 2001, Starr presented CSU with signed employee authorizations to inspect personnel files for seven Unit 6 employees. On February 8, 2002, Kobayashi-Lee refused to allow Starr access to the personnel files, despite the written authorizations.

SETC asserts that CSU violated HEERA by creating a "cover" for itself through the Authority and then abrogating the CBA and the July 2000 settlement agreement, particularly section 6. SETC contends that CSU delayed meetings and providing information to SETC so as to enable the Authority to approve and implement leases. Several leases are provided as attachments to the amended charge and show that CSU is the property owner who has leased the property to the Authority and the Authority has subleased a portion of the property back to CSU. Grupe Company (Grupe) manages the property. CSU has provided a list of CSU top

level staff and CSU trustees who also hold positions with the Authority. SETC further indicates that CSU exercises primary business, funding and legal control over the Authority. For example, CSU controls the State funds for the Authority and Authority business is conducted out of the CSU chancellor's office in Long Beach.

SETC generally asserts that through the Authority, CSU has violated the CBA in the areas of union rights, employee rights, bulletin boards, change in work areas, refusal to hire employees at the CSU Stanislaus – Turlock campus, however SETC does not identify any specifics of these violations.

SETC also alleges that it has requested to bargain Unit 6 work pursuant to the July 2000 settlement agreement and the CBA and provides a list of 24 items that it attempted to bargain. The request includes, among other items, the unit work to be performed at the Stockton site, break room, rest rooms, clean-up, movement of Unit 6 employees from the Central Plan shops to the Acacia Building, distribution of SETC literature, hours of work and assignments, use of maintenance equipment, appointment letters, personnel files, pay increases, and work performed by Grupe after January 2002.

BOARD AGENT DISMISSAL

SETC argues that the Authority is not independent and its actions are attributable to CSU. But as a threshold matter, the Board agent noted that SETC must state facts demonstrating that the two entities are either a "joint" or "single" employer and that SETC did not provide such evidence. Instead the Authority was established under the applicable Government Code provisions for a joint powers authority. Although some of the officers and Board of Directors of the Authority are CSU employees, there is no evidence that the actions of the Authority are in reality the actions of CSU.

The Board agent further found no unilateral change with regard to the layoffs of Unit 6 employees. Although the CBA directs CSU to negotiate the impacts of layoffs, as the Unit 6 employees are temporary employees, CBA Article 29.5 provides that “[n]on-reappointment of a temporary employee does not constitute layoff.” Because these employees were temporary, their termination did not constitute layoffs. Therefore, the Board agent concluded that there was no change in policy about which to meet and confer and thus no unlawful unilateral change.

The Board agent found that there was no transfer of bargaining unit work because two employees were dismissed by CSU and subsequently hired by the Authority. Even if the facts established a transfer of bargaining unit work, CBA Article 4 leaves the decision to contract out work as “the prerogative of the Employer,” without needing to meet and confer with SETC.

Further, the Board agent noted that even if SETC is able to establish that CSU made unlawful unilateral changes, such allegations are deferrable to binding arbitration. (PERB Reg. 32620(b)(6).) In this case, the allegations meet the standards articulated in Collyer Insulated Wire (1971) 192 NLRB 837 [77 LRRM 1931] (Collyer), including the fact that the parties have operated within a stable collective bargaining relationship, CSU has indicated its willingness to proceed to arbitration and waive procedural defenses, and the issues fall within CBA Articles 4 and 29.

The Board agent also found that the information requests are deferrable to arbitration under the above analysis. These requests fall within Articles 9 and 13 of the CBA.

The Board agent further found that SETC has not presented facts supporting its allegation of retaliation/discrimination against Unit 6 employees and so has failed to state a prima facie case. Even if such facts were provided, CBA Article 7.17 provides that:

An employee shall not suffer reprisals for participating in union activities.

Therefore, a retaliation discrimination charge is also subject to binding arbitration under the CBA.

Finally, the Board agent found that SETC failed to state a prima facie case of bad faith bargaining. SETC failed to provide facts showing that CSU engaged in any of the indicia of surface bargaining.

DISCUSSION

In its appeal, SETC does not dispute the Board agent's dismissal of the bad faith bargaining or discrimination allegations, and does not address the issue of deferral to arbitration for the remaining charges. For the reasons stated below, we find that the charge should be deferred to arbitration.

CBA Article 9 provides for final and binding arbitration of grievances. Grievances are defined in section 9.2 as a "written allegation by an employee that there has been a violation, misapplication, or misinterpretation of a specific term(s) of this Agreement." Article 9 does not limit the issues that can be grieved under the CBA. SETC has alleged that CSU has violated the CBA by laying off temporary Unit 6 employees from the Stockton site, contracting out bargaining unit work, and refusing to provide information, all in violation of the CBA. The layoff of the temporary Unit 6 employees and the contracting out of bargaining unit work is also alleged to violate the July 2000 settlement agreement.

PERB Regulation 32620(b)(6) requires the Board agent processing the charge to:

Place the charge in abeyance if the dispute arises under MMBA, HEERA or TEERA and is subject to final and binding arbitration

pursuant to a collective bargaining agreement, and dismiss the charge at the conclusion of the arbitration process unless the charging party demonstrates that the settlement or arbitration award is repugnant to the purposes of MMBA, HEERA or TEERA as provided in section 32661.

In Dry Creek Joint Elementary School District (1980) PERB Order No. Ad-81a (Dry Creek),⁵ the Board explained that:

While there is no statutory deferral requirement imposed on the National Labor Relations Board (hereafter NLRB), that agency has voluntarily adopted such a policy both with regard to post-arbitral and pre-arbitral award situations. [Fn. omitted.] EERA section 3541.5(a) essentially codifies the policy developed by the NLRB regarding deferral to arbitration proceedings and awards. It is appropriate, therefore, to look for guidance to the private sector. (Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608.)

Although Dry Creek was decided under the Educational Employment Relations Act (EERA)⁶ it has been applied to the HEERA. (Regents of the University of California (1983) PERB Order No. Ad-139-H; California State University (1984) PERB Decision No. 392-H.)

In Collyer and subsequent cases, the National Labor Relations Board articulated standards under which deferral is appropriate in prearbitral situations. These requirements are: (1) the dispute must arise within a stable collective bargaining relationship where there is no enmity by the respondent toward the charging party; (2) the respondent must be ready and willing to proceed to arbitration and must waive contract-based procedural defenses; and (3) the contract and its meaning must lie at the center of the dispute.

⁵See also State of California (Department of Food and Agriculture) (2002) PERB Decision No. 1473-S.

⁶EERA is codified at Government Code section 3540, et seq.

These standards are met with respect to this case. First, no evidence has been produced to indicate that the parties are not operating within a stable collective bargaining relationship. Second, by the attached letter from its Representative, Elisabeth Sheh Walter, dated September 5, 2002, CSU has indicated its willingness to proceed to arbitration and to waive all procedural defenses. Finally, the issue raised by this charge regarding layoffs of Unit 6 employees, contracting out bargaining unit work, and refusal to provide information directly involves, at the very minimum, an interpretation of Articles 4, 7, 9, 13 and 29 of the CBA⁷.

⁷CBA Article 4, Contracting Out, provides:

4.1 When determining whether or not to contract out work, the Employer shall make every reasonable effort to perform normal bargaining unit work in-house, within the limitations and requirements imposed by law. The decision to contract out work is the prerogative of the Employer.

4.2 The Union shall be notified of contracts pertaining to normal Unit 6 work. Circumstances permitting, such notifications shall be prior to the start of such contracted work.

CBA Article 7, Union Rights, provides, in pertinent part:

7.11 Upon written request to the Office of the Chancellor, the Union shall be provided with specifically identified information on wages, hours, and working conditions related to negotiations. Such information shall be provided within a reasonable period of time. The Union may be required to bear the cost of such information, if there is a cost associated. It is understood that this Article shall not be construed to develop or compile any information or data in a form not already compiled.

CBA section 9.20 provides:

In cases where it is necessary for the grievant or his/her representative to have access to information for the purpose of investigating a grievance, the grievant or his/her representative shall make a written request for such information to the appropriate administrator a reasonable amount of time before such information is needed. The appropriate administrator shall provide such information to the requesting party within a

Accordingly, this charge must be deferred to arbitration and will be placed in abeyance until such time as the arbitration process has concluded. Following the arbitration of this

reasonable amount of time after the request for the information is made.

CBA section 13.1(b) provides:

An employee may request a copy of any written materials in the personnel file and a copy will be provided in a timely manner.

CBA section 13.2 provides:

An employee may authorize in writing a union representative and/or steward to inspect his/her file and to request copies of materials in the file.

CBA Article 29, Layoff, provides, in pertinent part:

29.2 When the President determines that a layoff is necessary on a campus because of a lack of work or a lack of funds, the following procedures shall apply.

29.3 When the CSU determines that there may be a need for implementation of any procedures outlined in this Article, the CSU agrees to immediately meet and confer with the Union on the bargaining unit impact including, but not limited to, voluntary programs, reduced worktime, leaves of absence, and other personnel actions.

29.5 Non-reappointment of a temporary employee does not constitute layoff.

Interestingly, CBA section 10.4 provides, in pertinent part, that:

Temporary appointments may provide for separation of the employee prior to the expiration date of the appointment and shall specify that any employment in temporary status shall not be credited as a period of probationary service as defined in this Agreement. Such a separation shall not be subject to Article 29, Layoff, or Article 9, Grievance Procedure.

However, section 5 of the July 2000 settlement agreement expressly waives section 10.4. It is thus up to an arbitrator to interpret the interplay of these two provisions.

matter, the charge will be dismissed unless SETC seeks a repugnancy review by PERB of the arbitrator's decision under the Dry Creek criteria. (See Reg. 32661; Los Angeles Unified School District (1982) PERB Decision No. 218; Dry Creek.)

ORDER

The unfair practice charge in Case No. LA-CE-666-H is hereby IN PART DISMISSED, AND IN PART, PLACED IN ABEYANCE AND DEFERRED TO ARBITRATION.

Chairman Duncan and Member Neima joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



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October 17, 2002

Patrick Hallahan, Labor Consultant
9647 Folsom Blvd., Suite 307
Sacramento, CA 95827-1202

Re: State Employees Trades Council v. Trustees of the California State University
(Stanislaus)
Unfair Practice Charge No. LA-CE-666-H
PARTIAL DISMISSAL
PARTIAL ABEYANCE AND DEFERRAL TO ARBITRATION

Dear Mr. Hallahan:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on February 28, 2002. The State Employees Trades Council (SETC) alleges that the Trustees of the California State University (Stanislaus) violated the Higher Education Employer-Employee Relations Act¹ by making unlawful unilateral changes, by failing to provide information relevant to the representation of its members and by discriminating against Unit 6 members.

I indicated in the attached letter dated September 9, 2002, that the allegation that the University violated HEERA by failing to provide SETC with information necessary and relevant to the discharge of its duty was subject to deferral to arbitration. You were advised that if there were any factual inaccuracies in the letter or additional facts which would demonstrate that this allegation should not be deferred, the charge should be amended. You were further advised that unless the allegation was amended or withdrawn prior to September 16, 2002, it would be placed in abeyance and deferred to arbitration.

Also in the attached September 9, 2002 letter, I explained the remaining allegations contained in the charge did not state a prima facie violation of HEERA. 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. Further you were advised that unless you amended these allegations to state a prima facie case or withdrew them prior to September 16, 2002, the allegations would be dismissed.

You were unable to amend the charge by September 16, 2002. After you and Carol Edgerton of Attorney James Eggleston's office requested three extensions of time by which to amend this charge, the amended charge was filed on October 15, 2002.

¹ HEERA is codified at Government Code section 3560 et seq. The text of the HEERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

CSU Stanislaus has a satellite facility in Stockton, known as the CSU Stockton Center. In July 2000 SETC and CSU signed a settlement agreement in resolution of a grievance filed by SETC on behalf of Unit 6 employees at the CSU Stockton Center. In accordance with this settlement agreement, CSU hired approximately ten temporary Unit 6 employees at the CSU Stockton Center. CSU terminated the appointment of most of those temporary employees as of January 2002. Two Unit 6 employees continued to work for CSU until April 2002. In addition, two of the employees have gone to work for the Stockton Site Authority doing the same maintenance work done when they were employed by CSU.

In September 2001 the CSU Board of Trustees and the City of Stockton established a Joint Powers/Stockton Site Authority.

In December 2001, SETC filed a grievance on behalf of the eight Unit 6 employees. The grievance alleges in part that the University violated paragraphs 3, 5, 6, 7, 8, 9 and others of the July 2000 settlement agreement. In addition, the grievance specifically alleges that the University violated Article 4 of the contract regarding contracting out unit work.

From October 2001 through May 2002, SETC requested information from CSU regarding, in pertinent part, the layoffs (termination of appointments) of the Unit 6 employees, the relationship between CSU and Site Authority, as well as the decision by CSU to retain two Unit 6 employees until April 2002.

I spoke with you by phone on September 23, 2002. During that conversation you directed my attention to paragraph 6 of the parties' July 2000 settlement agreement which provides:

6. The parties acknowledge that within the next approximately 24-months that the CSU will not have operating authority over the entire Stockton site, but may retain a reduced scope of operating authority over that portion of the Stockton site devoted to CSU's occupancy. **The SETC Agreement shall apply to the performance of work within the scope of Unit 6 work under the Agreement with respect to all such facilities that are within the scope of CSU's reduced occupancy for the Stockton site.** (emphasis added)

Specifically you directed my attention to the bolded sentence above and argued that according to that sentence, the parties' collective bargaining agreement should apply to the remaining CSU facilities at the Stockton Site.

In the amended charge you assert that CSU has violated HEERA by "creating a 'cover' for itself called the 'Stockton Site Authority' and then abrogating the SETC-CSU collective bargaining agreement and the July 2000 Settlement Agreement." You assert that CSU delayed meetings and providing information to SETC, so as to enable the Site Authority to approve and implement leases.

In support of this contention you provide a copy of the Proposed Ground Lease between CSU and the Stockton Site Authority, the Interim Management Agreement between the Stockton Site Authority and Grupe Commercial Co., the Ground Lease between the Trustees of the CSU and Stockton Center Site Authority and the Sublease between the Site Authority and CSU. Together these documents demonstrate that CSU owns the property which is leased to the Site Authority and that the Site Authority has subleased a portion of the property to CSU Stanislaus. Grupe Co. manages the property.

In addition you provide a list of CSU Trustees and top-level CSU staff that also hold positions with the Site Authority. You also note that CSU controls the State's money in the Site Authority and that all Site Authority Business is conducted out of the CSU Chancellor's office in Long Beach.

In further support of your position that through the Site Authority, CSU is abrogating the Agreement, you list in part the following examples of how CSU refused to follow the Agreement regarding: union rights, employee rights, notice to the union, change in work areas, appointment letters, and to hire Unit 6 employees at the Stanislaus-Turlock campus. You provide no facts in support of this list.

You also state that SETC requested to bargain regarding Unit 6 work as identified in the July 2000 settlement agreement and the parties' collective bargaining agreement. In addition to requesting to bargain with CSU over what Unit 6 work would be done at the Stockton Site, you list twenty-four topics regarding Unit 6 working conditions at the Stockton Site that SETC requested to bargain. That list includes in part the following topics: movement of Unit 6 employees from Central Plant shops to Acacia Building; Unit 6 break room, rest rooms, clean-up; transfer rights of temporary employees to Turlock Campus; distribution of SETC literature; Unit 6 hours of work and assignments; use of maintenance equipment; appointment letters; personnel files; pay increases and the work done by Grupe Co. and other contractors after January 2002.

DISCUSSION

As a threshold issue, in the September 9, 2002, warning letter I explained that although you argue that the Site Authority is a "cover" for CSU, you have not demonstrated that the two constitute either a "joint employer" or a "single employer." A "single employer" relationship exists where two nominally separate entities are in reality part of a single integrated enterprise, and in fact only a single employer. A "joint employer" relationship exists where two or more employers exert significant control over the same employees, and the facts show that they share those matters governing essential terms and conditions of employment. (The Regents of the University of California (1999) PERB Order No. Ad-293-H.)

Here, the Stockton Site Authority was established under the applicable provisions of the Government Code and is a public entity separate from the City of Stockton and CSU. Although a significant number of the Site Authority's Board of Directors and officers are CSU employees, you have provided no evidence that the actions of the Site Authority are in reality

those of CSU under either theory. Because the Site Authority was created in conjunction with the City of Stockton, there are also City of Stockton officials involved in the running of the Site Authority.

It should be noted that even if the Site Authority was a cover for CSU, the allegations in the charge would still be deferred to arbitration and dismissed pursuant to the parties' collective bargaining agreement and PERB precedent as explained below.

Information Requests

You allege that CSU violated HEERA by failing to provide SETC with information necessary and relevant to the discharge of its duty of representation when it failed to provide SETC with the information requested from October 2001 through May 2002 and denied the union access to personnel files in February 2002.

Article 9.20 of the parties' collective bargaining agreement provides:

In cases where it is necessary for the grievant or his/her representative to have access to information for the purpose of investigating a grievance, the grievant or his/her representative shall make a written request for such information to the appropriate administrator a reasonable amount of time before such information is needed. The appropriate administrator shall provide such information to the requesting party within a reasonable amount of time after the request for information is made.

Article 13.1 provides in part:

.....

- a. An employee shall have the right to inspect his/her personnel file at reasonable times during the regular business hours of the Personnel Office.
- b. An employee may request a copy of any written materials in the personnel file and a copy will be provided in a timely manner.
- c. One (1) copy of each document which is related to a grievance and maintained in the personnel file shall be provided free of charge to the employee, upon the employee's request.
- d. The employee may be required to bear the cost of duplicating other materials.

Article 13.2 provides:

An employee may authorize in writing a union representative and/or steward to inspect his/her file and to request copies of materials in the file.

As I explained in the attached letter, PERB Regulation 32620(b)(6) requires a Board agent to “[p]lace the charge in abeyance if the dispute arises under MMBA or HEERA and is subject to final and binding arbitration pursuant to a collective bargaining agreement. . . .” You did not address the potential deferral of this allegation in the amended charge.

The charge alleges that CSU failed to provide SETC with the information requested and denied the union access to personnel files. This conduct is covered by the parties’ collective bargaining agreement, the Respondent has agreed to waive any procedural defenses, and there is no evidence that the dispute arises in other than a stable collective bargaining environment. Accordingly, these allegations must be deferred to arbitration and shall be placed in abeyance until such time as the arbitration process has concluded. Following the arbitration of this matter, the allegations will be dismissed unless the Charging Party seeks a repugnancy review by PERB of the arbitrator’s decision under the Dry Creek criteria. (See Regulation 32661; Los Angeles Unified School District (1982) PERB Decision No. 218; Dry Creek Joint Elementary School District (1980) PERB Order No. Ad-81a.)

This Notice of Abeyance is an interlocutory order and, therefore, is not appealable to the Board itself except as specified in Regulation 32200. In accordance with Regulation 32200, a party may object to this decision to place these allegations in abeyance and request a ruling by the Board itself within ten (10) days following the date of service of this decision by filing a written request with the undersigned at the letterhead address and by filing a copy with the Board itself, addressed as follows:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

The Board itself will accept the request only if the Board agent joins in the request and has made a determination that all of the following apply:

1. The issue involved is one of law;
2. The issue involved is controlling in the case; and
3. An immediate appeal will materially advance the resolution of the case.

Unilateral Change, Discrimination/Retaliation and Bad Faith Bargaining

In the original charge, you allege that CSU was obligated to meet and confer with SETC regarding the layoff of the temporary Unit 6 employees, that CSU transferred bargaining unit work when two of the temporary Unit 6 employees were later hired by the Site Authority and that CSU discriminated/retaliated against Unit 6 members. You did not address these allegations in the amended charge. Thus for the reasons stated in the September 9, 2002 warning letter these allegations are dismissed.

In the amended charge, you allege that CSU has failed to bargain in good faith since December 2001. Bad faith or surface bargaining is a violation of HEERA section 3571(c). It is the essence of surface bargaining that a party goes through the motions of negotiations, but in fact is weaving otherwise unobjectionable conduct into an entangling fabric to delay or prevent agreement. (Muroc Unified School District (1978) PERB Decision No. 80.) Where there is an accusation of surface bargaining, PERB will resolve the question of good faith by analyzing the totality of the accused party's conduct. The Board weighs the facts to determine whether the conduct at issue "indicates an intent to subvert the negotiating process or is merely a legitimate position adamantly maintained." (Oakland Unified School District (1982) PERB Decision No. 275.)

The indicia of surface bargaining are many. Entering negotiations with a "take-it-or-leave-it" attitude evidences a failure of the duty to bargain because it amounts to merely going through the motions of negotiations. (General Electric Co. (1964) 150 NLRB 192, 194 [57 LRRM 1491], enf. 418 F.2d 736 [72 LRRM 2530].) Recalcitrance in the scheduling of meetings is evidence of manipulation to delay and obstruct a timely agreement. (Oakland Unified School District (1983) PERB Decision No. 326.) Dilatory and evasive tactics including canceling meetings or failing to prepare for meetings is evidence of bad faith. (Oakland Unified School District, *supra*, PERB Decision No. 326.) Conditioning agreement on economic matters upon prior agreement on non-economic subjects is evidence of an unwillingness to engage in a give-and-take. (State of California (Department of Personnel Administration) (1998) PERB Decision No. 1249-S.)

Other factors that have been held to be indicia of surface bargaining include: negotiator's lack of authority which delays and thwarts the bargaining process (Stockton Unified School District (1980) PERB Decision No. 143); insistence on ground rules before negotiating substantive issues (San Ysidro School District (1980) PERB Decision No. 134); and renegeing on tentative agreements the parties already have made (Charter Oak Unified School District (1991) PERB Decision No. 873; Stockton Unified School District, *supra*, PERB Decision No. 143; Placerville Union School District (1978) PERB Decision No. 69).

You allege that CSU failed to bargain in good faith and provide a list of twenty-four topics regarding Unit 6 working conditions that SETC requested to bargain. However, you have not shown how requesting to bargain the items on this list constitutes in the totality a failure on the part of CSU to bargain in good faith. You have not demonstrated any of the indicia of surface

bargaining listed above. As such the allegation that CSU failed to bargain in good faith in violation of Government Code section 3571(c) is dismissed.

Right to Appeal

Pursuant to PERB Regulations,² 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. (Regulation 32635(a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Regulations 32135(a) and 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Regulation 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

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 Regulation 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. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Regulation 32135(c).)

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. (Regulation 32132.)

² PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

Final Date

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

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. (Regulation 32635(b).)

Sincerely,

ROBERT THOMPSON
General Counsel

By _____
Marie A. Nakamura
Regional Attorney

Attachment

cc: Elisabeth Sheh Walter

MAN

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
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September 9, 2002

Patrick Hallahan, Labor Consultant
9647 Folsom Blvd., Suite 307
Sacramento, CA 95827-1202

Re: State Employees Trades Council v. Trustees of the California State University
(Stanislaus)
Unfair Practice Charge No. LA-CE-666-H
WARNING LETTER

Dear Mr. Hallahan:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on February 28, 2002. The State Employees Trades Council (SETC) alleges that the Trustees of the California State University (Stanislaus) violated the Higher Education Employer-Employee Relations Act¹ by making unlawful unilateral changes, by failing to provide information relevant to the representation of its members and by discriminating against Unit 6 members.

FACTS

SETC and CSU are parties to a collective bargaining agreement effective from July 1, 1999 through June 30, 2002 for Bargaining Unit 6, Skilled Crafts. Article 9 of the Agreement sets forth the grievance procedure, which ends in binding arbitration.

Lay-Off and Transfer of Bargaining Unit Work

Article 1.9(e) of the Agreement provides the following definition of temporary employee:

Temporary Employee – The term “temporary employee” as used in this Agreement refers to a bargaining unit employee who is serving in a temporary appointment for a specified period of time.

Article 4, Contracting Out, provides at 4.1:

When determining whether or not to contract out work, the Employer shall make every reasonable effort to perform normal bargaining unit work in-house, within the limitations and

¹ HEERA is codified at Government Code section 3560 et seq. The text of the HEERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

requirements imposed by law. The decision to contract out work is the prerogative of the Employer.

Article 29 of the agreement covers layoffs. Article 29.3, Notice of Impending Layoff, provides:

When CSU determines that there may be a need for implementation of any procedures outlined in this Article, the CSU agrees to immediately meet and confer with the Union on the bargaining unit impact including, but not limited to, voluntary programs, reduced worktime, leaves of absence, and other personnel actions.

Article 29.5 provides, “[n]on-reappointment of temporary employees does not constitute layoff.”

CSU Stanislaus has a satellite facility in Stockton, known as the CSU Stockton Center. In July 2000 SETC and CSU signed a settlement agreement in resolution of a grievance filed by SETC on behalf of Unit 6 employees at the CSU Stockton Center.

The July 2000 settlement agreement provides in part:

.....
2. The University agrees to hire temporary Unit 6 personnel to operate and maintain CSU-Stanislaus, Stockton site only, for the remaining period that it has operating authority for the entire site or until the central plant is eliminated, whichever is sooner. Temporary employees shall be hired under this agreement.
.....

6. The parties acknowledge that within the next approximately 24-months that the CSU will not have operating authority over the entire Stockton site, but may retain a reduced scope of operating authority over that portion of the Stockton site devoted to CSU’s occupancy. The SETC Agreement shall apply to the performance of work within the scope of Unit 6 work under the Agreement with respect to all such facilities that are within the scope of CSU’s reduced occupancy for the Stockton site.

7. The parties agree that the obligations of this agreement apply to CSU and not to any other person or entity that may assume some or all of the operating authority for some portion or all of the Stockton site independent of any CSU operating authority.

.....

In accordance with this settlement agreement, CSU hired approximately ten temporary Unit 6 employees at the CSU Stockton Center. These temporary employees were assigned Unit 6 work. Each of the temporary employees were provided a letter from the Human Resources Director in September or October 2001 that stated in part, "...California State University, Stanislaus is pleased to notify you of your temporary full time reappointment as an Operating Engineer..." The letter also states, "[t]his appointment is effective from October 1, 2001 and will end on or before February 28, 2002."²

In May 2001 the CSU Board of Trustees established a Joint Powers/Stockton Site Authority with a Board of Directors to oversee the redevelopment of the CSU Stanislaus Stockton Site.

The Joint Powers Agreement provide in part:

.....

2. Site Authority Created. There s hereby created a public entity to be known as the "Stockton Center Site Authority." The Site Authority is formed by this Agreement pursuant to the provisions of articles 1-4, chapter 5, division 7, title 1 of the Government Code of the State of California. The Site Authority shall be a public entity separate from the Parties hereto and shall administer this Agreement.

10. Governing Body of the Site Authority.

a. The business of the Site Authority shall be conducted by a Board of Directors consisting of seven (7) persons. All voting power of the Site Authority shall reside in the Board of Directors. The Board shall be comprised as follows: three (3) Stockton City Councilmembers appointed by the City, three (3) members appointed by the Chancellor of the California State University, and one (1) member jointly appointed by the Mayor of the City of Stockton and Chancellor of the California State University.

.....

The Board of Directors was selected pursuant to the Joint Settlement Agreement. The Executive Director of the Stockton Site Authority is CSU Assistant Vice Chancellor Patrick

² Copies of these letters were provided by Respondent in Exhibit 6 of the supplemental response sent by CSU to SETC and PERB on June 14, 2002.

Drohan. CSU General Counsel Elisabeth Sheh Walter is the attorney for the Site Authority. Secretary of the Site Authority is the City Clerk for the City of Stockton.

SETC was unaware of the establishment of the Site Authority until October 2001 when rumors began to circulate that there might be layoffs of Unit 6 employees at the CSU Stockton Center. In October and November 2001 SETC Steward Greg Starr discussed the rumored layoffs with representatives of CSU. On December 3, 2001, Mr. Starr sent to CSU Stanislaus Director of Human Resources Mary Kobayashi-Lee a memorandum requesting that CSU Stanislaus meet with representatives of the union to discuss the Stockton Center Unit 6 employees.

On December 14, 2001, SETC representatives met with CSU representatives. During this meeting CSU provided SETC with copies of notices which state that the appointment of the eight Unit 6 employees would end on January 15, 2002. SETC characterizes these notices as "layoff" notices. SETC requested that CSU postpone any layoffs until the parties could meet and work out an agreement and also requested to bargain the effect of the layoffs. The notice provide to each temporary Unit 6 employee states in part:

This letter is official notification that your temporary appointment as Facilities Maintenance Mechanic will be ending on January 15, 2002...

On December 20, SETC filed a grievance on behalf of the eight Unit 6 employees. The grievance alleges that the University violated paragraphs 3, 5, 6, 7, 8, 9 and others of the July 2000 settlement agreement. In addition, the grievance specifically alleges that the University violated Article 4 of the contract regarding contracting out unit work. The grievance also alleges that the University violated several other Articles of the contract but does not explain how these articles were violated.

On December 21, 2001, Ms. Kobayashi-Lee sent SETC a letter that stated that some yet undetermined number of Unit 6 employees would have their appointments extended through April 2002. Two Unit 6 employees remained working for the University until April 2002.

The parties met on February 4, 2002, to discuss the grievance which had proceeded to Level III. The grievance was not resolved at this level. SETC has requested to meet with CSU regarding these grievances on numerous occasions.

Since the Unit 6 employees' temporary assignments ended, two of the employees have gone to work for the Stockton Site Authority doing the same maintenance work done when they were employed by CSU.

Information Requests

Article 9.20 of the parties' collective bargaining agreement provides:

In cases where it is necessary for the grievant or his/her representative to have access to information for the purpose of investigating a grievance, the grievant or his/her representative shall make a written request for such information to the appropriate administrator a reasonable amount of time before such information is needed. The appropriate administrator shall provide such information to the requesting party within a reasonable amount of time after the request for information is made.

Article 13.1 provides in part:

.....

- a. An employee shall have the right to inspect his/her personnel file at reasonable times during the regular business hours of the Personnel Office.
- b. An employee may request a copy of any written materials in the personnel file and a copy will be provided in a timely manner.
- c. One (1) copy of each document which is related to a grievance and maintained in the personnel file shall be provided free of charge to the employee, upon the employee's request.
- d. The employee may be required to bear the cost of duplicating other materials.

Article 13.2 provides:

An employee may authorize in writing a union representative and/or steward to inspect his/her file and to request copies of materials in the file.

From October 2001 through May 2002, SETC requested information from CSU regarding, in pertinent part, the layoffs of the Unit 6 employees, the relationship between CSU and Site Authority, as well as the decision by CSU to retain two Unit 6 employees until April 2002. Per my request on May 24, 2002 you provided PERB with a lengthy list of information requested from CSU. While CSU provided you with some of the requested information, CSU representative Ms. Kobayashi-Lee informed you that because CSU and the Site Authority had a landlord tenant relationship, much of the information should be requested directly from the landlord Site Authority.

On December 20, 2001, SETC Representative Starr presented CSU with signed employee authorizations to inspect personnel files for seven Unit 6 employees. On February 8, 2002,

Ms. Kobayashi-Lee refused to allow Mr. Starr access to the personnel files, despite the written authorizations.

DISCUSSION

The charge alleges that CSU made unlawful unilateral changes by laying off the Unit 6 employees at the CSU Stockton Center without meeting and conferring with SETC, and by transferring bargaining unit work from Unit 6 to the newly created Stockton Site Authority. In addition, the charge alleges that CSU failed to provide relevant information requested by SETC and discriminated against Unit 6 employees.

Before turning to these allegations as threshold issue, you argue that the Stockton Site Authority is not an independent entity and that its actions are attributable to CSU. However, you provide no evidence to support this contention. In order to show that the actions of the Stockton Site Authority are attributable to CSU, you must establish that the two constitute either a "joint employer" or a "single employer." A "single employer" relationship exists where two nominally separate entities are in reality part of a single integrated enterprise, and in fact only a single employer. A "joint employer" relationship exists where two or more employers exert significant control over the same employees, and the facts show that they share those matters governing essential terms and conditions of employment. (The Regents of the University of California (1999) PERB Order No. Ad-293-H.)

The Stockton Site Authority was established under the applicable provisions of the Government Code and is a public entity separate from the City of Stockton and CSU. Although a portion of the Site Authority's Board of Directors and one of its officers are CSU employees, you have provided no evidence that the actions of the Site Authority are in reality those of CSU under either a single or joint employer theory.

Unilateral Changes

First, in determining whether a party has violated HEERA section 3571(c), PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. (Stockton Unified School District (1980) PERB Decision No. 143.) Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented before the employer notified the exclusive representative and gave it an opportunity to request negotiations. (Walnut Valley Unified School District (1981) PERB Decision No. 160; Grant Joint Unified High School District (1982) PERB Decision No. 196.)

Here there has been no change in policy within the scope of representation in regards to the alleged layoffs. It is undisputed that the Unit 6 employees working at the CSU Stockton Center were temporary employees. Although the collective bargaining agreement directs CSU to meet and confer with SETC regarding the impact of any layoffs, Article 29.5 specifically provides that "[n]on-reappointment of temporary employees does not constitute layoff."

Because the Unit 6 employees were temporary, their dismissal in January 2002 did not constitute layoffs. Thus there was no change in policy about which the University had an obligation to meet and confer. Without a change in policy within the scope of representation there can be no unlawful unilateral change.

Second, in determining whether a party has violated HEERA section 3571(c), by transferring bargaining unit work PERB utilizes the same unilateral change analysis above along with the following additional legal guidelines.

PERB has held that the transfer of work from bargaining unit employees to those in a different or no bargaining unit is a subject within the scope of representation. (Rialto Unified School District (1982) PERB Decision No. 209.) However, not all transfers of bargaining unit work are negotiable. In Eureka City Schools (1985) PERB Decision No. 481, the Board held that a change in the distribution of duties between unit and non-unit employees, where there is an established practice of overlapping duties, does not always give rise to a duty to bargain. In Eureka, the Board stated that:

In our view, in order to prevail on a unilateral transfer of work theory, the charging party must establish, as a threshold matter, that duties were, in fact, transferred out of the unit; that is, that unit employees ceased to perform work which they had previously performed or that nonunit employees began to perform duties previously performed exclusively by unit employees. However, where, as here, unit and nonunit employees have traditionally had overlapping duties, an employer does not violate its duty to negotiate in good faith merely by increasing the quantity of work which nonunit employees perform and decreasing the quantity of work which unit employees perform.
[Emphasis in original; footnote omitted.]

Here, CSU has not unlawfully transferred bargaining Unit 6 work. There was no transfer of bargaining unit work from one unit to another. Instead the two employees were dismissed by CSU and subsequently hired by the Site Authority, a new employer.

It should be noted that if facts are presented that establish that CSU did transfer bargaining unit work, Article 4 of the collective bargaining agreement establishes a policy for contracting out work and expressly states that the "decision to contract out work is the prerogative of the Employer." Thus CSU has the authority under the collective bargaining agreement to transfer bargaining unit work without meeting and conferring with SETC.

Further even if Charging Party is able to establish that SETC made unlawful unilateral changes, such allegations would be deferrable to arbitration. Regulation 32620(b)(6) requires the Board agent processing the charge to:

Place the charge in abeyance if the dispute arises under MMBA or HEERA and is subject to final and binding arbitration pursuant to a collective bargaining agreement, and dismiss the charge at the conclusion of the arbitration process unless the charging party demonstrates that the settlement or arbitration award is repugnant to the purposes of MMBA or HEERA, as provided in section 32661.

In Dry Creek Joint Elementary School District (1980) PERB Order No. Ad-81a,³ the Board explained that:

While there is no statutory deferral requirement imposed on the National Labor Relations Board (hereafter NLRB), that agency has voluntarily adopted such a policy both with regard to post-arbitral and pre-arbitral award situations.² EERA section 3541.5(a) essentially codifies the policy developed by the NLRB regarding deferral to arbitration proceedings and awards. It is appropriate, therefore, to look for guidance to the private sector.³ [Fn. 2 omitted; fn. 3 to Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608.]

Although Dry Creek was decided under the Educational Employment Relations Act⁴ it has been applied to the HEERA. (Regents of the University of California (1983) PERB Order No. Ad-139-H; California State University (1984) PERB Decision No. 392-H.)

In Collyer Insulated Wire (1971) 192 NLRB 837 [77 LRRM 1931] and subsequent cases, the National Labor Relations Board articulated standards under which deferral is appropriate in prearbitral situations. These requirements are: (1) the dispute must arise within a stable collective bargaining relationship where there is no enmity by the respondent toward the charging party; (2) the respondent must be ready and willing to proceed to arbitration and must waive contract-based procedural defenses; and (3) the contract and its meaning must lie at the center of the dispute.

These standards are met with respect to the unilateral change allegations. First, no evidence has been produced to indicate that the parties are not operating within a stable collective bargaining relationship. Second, by the attached letter from its representative, Elizabeth Sheh Walter, dated September 5, 2002, as well as CSU's response of March 29, 2002, the Respondent has indicated its willingness to proceed to arbitration and to waive all procedural defenses. Finally, the issues raised by this charge that the University made unlawful unilateral

³ See also State of California (Department of Food and Agriculture) (2002) PERB Decision No. 1473-S.

⁴ The Educational Employment Relations Act is codified at Government Code section 3540 et seq.

changes regarding layoffs and the transfer of bargaining unit work directly involve interpretation of Articles 4 and 29 of the MOU.

Information Requests

You allege that the University violated HEERA by failing to provide SETC with information necessary and relevant to the discharge of its duty of representation when Ms. Kobayashi-Lee failed to provide SETC with the information requested and denied the union access to personnel files.

The exclusive representative is entitled to all information that is "necessary and relevant" to the discharge of its duty of representation. (Stockton Unified School District (1980) PERB Decision No. 143). PERB uses a liberal standard, similar to a discovery-type standard, to determine relevance of the requested information. (California State University (1986) PERB Decision No. 613-H.) Failure to provide such information is a per se violation of the duty to bargain in good faith

Despite this liberal standard, no complaint will issue as to these allegations as they are also deferrable to arbitration under the standard explained above.

First, no evidence has been produced to indicate that the parties are not operating within a stable collective bargaining relationship. Second, by the attached letter from its representative, Elizabeth Sheh Walter, dated September 5, 2002, as well as the response of March 29, 2002, the Respondent has indicated its willingness to proceed to arbitration and to waive all procedural defenses. Finally, the issue raised by this charge that the University failed to provide information that was relevant and necessary directly involves interpretations of Articles 9 and 13 of the MOU.

Discrimination/Retaliation

The charge specifically alleges that CSU "threatened, discriminated against, interfered with, restrained and coerced Unit 6 Skilled trades working at CSUS and CSUS Stockton Center." However, Charging Party presents no facts in support of this allegation. To demonstrate a violation of HEERA section 3571(a), the charging party must show that: (1) the employee exercised rights under HEERA; (2) the employer had knowledge of the exercise of those rights; and (3) the employer imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained or coerced the employees because of the exercise of those rights. (Novato Unified School District (1982) PERB Decision No. 210 (Novato); Carlsbad Unified School District (1979) PERB Decision No. 89.)

Charging Party provides no facts to demonstrate that any Unit 6 employee was discriminated against for exercising protected rights. As such you have not established a prima facie discrimination violation.

Further, Article 7.17 of the collective bargaining agreement provides:

An employee shall not suffer reprisals for participating in union activities.

As such, under the same legal standard set forth above, this allegation must also be deferred to arbitration.

If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, please amend the charge. 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 have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB.

If I do not receive an amended charge or withdrawal from you before, **Monday, September 16, 2002**, I will **dismiss the unilateral change and discrimination violations. In addition I will defer the remaining allegations to arbitration** and they will be placed in abeyance until such time as the arbitration process has concluded. Following the arbitration of this matter, the charge will be dismissed unless the Charging Party seeks a repugnancy review by PERB of the arbitrator's decision under the Dry Creek criteria. (See Regulation 32661; Los Angeles Unified School District (1982) PERB Decision No. 218; Dry Creek Joint Elementary School District, supra.)

If you have any questions, please call me at the telephone number listed above.

Sincerely,

Marie A. Nakamura
Regional Attorney

MAN