STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ALLAN HANCOCK COLLEGE PART-TIME FACULTY ASSOCIATION, Charging Party, v. ALLAN HANCOCK JOINT COMMUNITY COLLEGE DISTRICT, Respondent.	Case No. LA-CE-4748-E PERB Decision No. 1685 September 8, 2004

Appearance: Lawrence Rosenzweig, Attorney, for Allan Hancock College Part-Time Faculty Association; Liebert Cassidy Whitmore by Linda Jenson, Attorney, for Allan Hancock Joint Community College District.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

NEIMA, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Allan Hancock College Part-Time Faculty Association (Association) of a Board agent's dismissal (attached) of its unfair practice charge. The charge alleged that the Allan Hancock Joint Community College District (District) violated the Educational Employment Relations Act (EERA) [1] by transferring work out of the Association's bargaining unit.

The Board has reviewed the entire record in this matter, including the original and amended unfair practice charge, the warning and dismissal letters, the Association's appeal and

[1] EERA is codified at Government Code section 3540, et seq.

the District's response. The Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board, subject to the discussion below.

DISCUSSION

In this matter, the Association alleges that the District has unilaterally assigned various administrators to teach District courses and that the administrators agreed to do so for partial pay. The Association alleges that by this conduct the District violated EERA. In support, the Association cites to Ventura County Community College District (2003) PERB Decision No. 1547 (Ventura). The Association argues that in Ventura, the Board ruled that a district violated EERA by unilaterally assigning district classes to employees of the local sheriff's department, who taught the classes without pay from the district.

The Board finds the Ventura decision inapposite under the facts here. In Ventura, the district transferred work out of a bargaining unit and gave it to employees who had never previously performed the work. Consistent with well-settled precedent, the Board found such facts to constitute an unlawful transfer of work. (Rialto Unified School District (1982) PERB Decision No. 209; Eureka City School District (1985) PERB Decision No. 481 (Eureka).)

The situation here is different. It is undisputed that the administrators have "sporadically" taught classes in the past. The Association appears to argue that because administrators only performed teaching duties sporadically, the duty is not an overlapping one within the meaning of Eureka.[2] However, the Association failed to provide the facts necessary to support this contention. As a result, the Board finds that this case falls under Eureka and dismisses the charge.

[2]In Eureka, the Board stated that, "where . . . 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."

ORDER

The unfair practice charge in Case No. LA-CE-4748-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member Whitehead joined in this Decision.

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1023
Fax: (510) 622-1027

June 8, 2004

Lawrence Rosenzweig

Re: Allan Hancock College Part-Time Faculty Association v. Allan Hancock Joint Community College District
Unfair Practice Charge No. LA-CE-4748-E, First Amended Charge
DISMISSAL LETTER

Dear Mr. Rosenzweig:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on April 28, 2004. The Allan Hancock College Part-Time Faculty Association alleges that the Allan Hancock Joint Community College District violated the Educational Employment Relations Act (EERA)[1] by transferring out bargaining unit work.

I indicated to you in my attached letter dated May 21, 2004, 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 June 2, 2004, the charge would be dismissed. On May 27, 2004, you filed a first amended charge.

The original charge alleged the District violated the EERA by assigning administrators to teach classes. The warning letter noted that administrators had performed teaching duties prior to the District's December 17, 2003 decision to assign administrators this work as part of a cost-saving measure. The warning letter explained the charge did not demonstrate that teaching classes is work exclusive to the Part-Time Faculty bargaining unit represented by the Charging Party.

The first amended charge alleges the December 17, 2003 announcement violates the EERA in the following ways:

1. Administrators will teach at least part of the class without pay, thus undermining the negotiated working conditions of the part-time bargaining unit.

[1] EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

> 2. The assignment of administrators to teach classes is an across-the-board, generalized pattern. In the past, administrators have sporadically taught classes, that is, some administrators taught classes and some did not. Teaching class was not one of the requirements of being an administrator. Now, pursuant to Exhibit A [the December 17th memo], administrators must either teach class or donate money to the District.
>
> 3. There is no established practice of administrators being required to teach a class and there certainly is no past practice of administrators, or anyone else, teaching a class for free, or even at reduced wages. In the past, administrators who taught classes were paid for all hours taught.
>
> 4. The plan to pay administrators at the part-time rate minus the donated time is a reduction in wages for part-time teaching.
>
> 5. There has been no bargaining with respect to the unilateral change.

The above-stated information fails to state a prima facie violation for the reasons that follow.

In determining whether a party has violated EERA section 3543.5(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.)

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.]

A duty to bargain may still be found where there are negotiable effects such as a reduction of hours in the bargaining unit positions (Id.) or if unit employees cease to perform the overlapping work. (Calistoga Joint Unified School District (1989) PERB Decision No. 744.)

The amended charge fails to correct the deficiencies noted in the warning letter. Teaching classes is not work exclusive to the Part-Time Faculty bargaining unit. The administrators shared this work prior to the District's December 17th memo. The District's decision to increase the administrators' share of the work and to decrease of the part-time faculty's share of the work does not violate the Act. (See Eureka City Schools (1985) PERB Decision No. 481.) Nor does the charge demonstrate that the District's decisions regarding the administrators' wages, hours and working conditions, e.g. requiring the administrators to teach at a reduced wage, changed any of the part-time faculty's conditions of employment. Nor are those decisions negotiable as the administrators are not in the part-time faculty bargaining unit. Thus, the charge fails to demonstrate a prima facie violation and 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. (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. (Regulations 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

The Board's address is:

Public Employment Relations Board

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

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

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).)

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.)

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
General Counsel

By __

Tammy Samsel
Regional Attorney

Attachment
cc: Linda Jensen

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1023
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May 21, 2004

Michael Terman, Field Representative
California Federation of Teachers
1757 Mesa Verde, Suite 250
Ventura, CA 93003

Re: Allan Hancock College Part-Time Faculty Association v. Allan Hancock Joint Community College District
Unfair Practice Charge No. LA-CE-4748-E
WARNING LETTER

Dear Mr. Terman:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on April 28, 2004. The Allan Hancock College Part-Time Faculty Association alleges that the Allan Hancock Joint Community College District violated the Educational Employment Relations Act (EERA)[1] by transferring out bargaining unit work. My investigation revealed the following information.

The Allan Hancock Joint Community College District employs part-time faculty employees who are exclusively represented by the Allan Hancock College Part-Time Faculty Association. On December 17, 2003, the District notified the Association of its decision to implement the cost-saving measure of assigning administrators to teach classes. On January 20, 2004, the Association objected, but the District indicated that it had the discretion to make these assignments. Administrators have performed teaching duties prior to these particular assignments.

The above-stated information fails to state a prima facie violation for the reasons that follow.

In determining whether a party has violated EERA section 3543.5(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.)

[1] EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

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.]

A duty to bargain may still be found where there are negotiable effects such as a reduction of hours in the bargaining unit positions (Id.) or if unit employees cease to perform the overlapping work. (Calistoga Joint Unified School District (1989) PERB Decision No. 744.)

The charge does not demonstrate that teaching classes is work exclusive to the Part-Time Faculty bargaining unit. As the work was shared with administrators, the District's December 17, 2003 assignments did not violate the EERA. Thus, this charge must be dismissed.

For these reasons the charge, as presently written, does not state a prima facie case. 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 June 2, 2004, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Tammy Samsel
Regional Attorney

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