STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ADRIAN PIETER MAASKANT, Charging Party, v. KERN HIGH FACULTY ASSOCIATION, CTA/NEA Respondent.	Case No. LA-CO-1212-E PERB Decision No. 1885 February 14, 2007

Appearances: Adrian Maaskant, on his own behalf; California Teachers Association by Diane Ross, Attorney, for Kern High Faculty Association, CTA/NEA.

Before Duncan, Chairman; Shek and McKeag, Members.

DECISION

McKEAG, Member: This case comes before the Public Employment Relations Board (Board) on appeal by Adrian Pieter Maaskant (Maaskant) of a Board agent's dismissal (attached) of his unfair practice charge. The charge alleged that the Kern High Faculty Association, CTA/NEA (Association) violated the Educational Employment Relations Act (EERA)[1] by not allowing Maaskant to serve on the Association's representative council. Maaskant alleged that this conduct constituted a violation of EERA sections 3543(a), 3543.2(a), 3543.6(b) and 3544.9.

We have reviewed the entire record in this matter, including but not limited to, the unfair practice charge, the Association's position statement, Maaskant's response, Maaskant's supplemental letter, the first amended unfair practice charge and the warning and dismissal

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

letters. Based on this review, we find the Board agent's dismissal to be free of prejudicial error and adopt it as a decision of the Board itself.

ORDER

The unfair practice charge in Case No. LA-CO-1212-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member Shek joined in this Decision.

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

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July 14, 2006

ADRIAN PIETER MAASKANT

Re: Adrian Pieter Maaskant v. Kern High Faculty Association
Unfair Practice Charge No. LA-CO-1212-E
DISMISSAL LETTER

Dear Mr. Maaskant:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on August 31, 2005. The charge alleges that the Kern High Faculty Association (Union) violated the Educational Employment Relations Act (EERA)[1] by not allowing the Charging Party to serve on the Union's Representative Council.

I indicated in my attached letter dated June 28, 2006, that the above-referenced charge did not state a prima facie case. The Charging Party was advised that, if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, he should amend the charge. He was further advised that, unless he amended the charge to state a prima facie case or withdrew it prior to July 6, 2006, the charge would be dismissed. On July 5, 2006, the Charging Party filed an amended charge.

The amended charge does not provide any additional facts supporting the Charging Party's allegations. Instead the amended charge takes issue with the legal standard articulated in my June 28, 2006 letter. The letter stated "[p]articipation in union elections is an internal union affair. The Board traditionally has refused to interfere in the internal affairs of an employee organization unless those affairs impact the member's relationship with his/her employer." (California School Employees Association & its Chapter 36 (Peterson) (2004) PERB Decision No. 1733 (other citations omitted).) The amended charge asserts that that this standard is inappropriate because an agency fee payer may be required to contribute to the Union while at the same time may be precluded from providing meaningful input to the Union's labor relations. However, the Board has consistently upheld this standard and has not delineated an exception for the situation raised in the amended charge. (See e.g. Service Employees International Union, Local 99 (Kimmett) (1979) PERB Decision No. 106; California State Employees Association (Hard, et al.) (1999) PERB Decision No. 1368-S; California School Employees Association & its Chapter 36 (Peterson) (2004) PERB Decision No. 1733.)

[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.

Therefore the issue is whether, under the current standard, the charge states a prima facie case for a breach of the Union's duty of fair representation or of unlawful discrimination.

The amended charge contends that the Union's conduct substantially impacted the Charging Party's relationship with the Kern High School District (District) because the Union did not allow him to be a member of the Representative Council. The charge asserts that this prohibited the Charging Party from engaging in dialogue related to his working conditions. This argument is unpersuasive because the charge does not provide sufficient information to conclude that the Charging Party did not have any opportunity to engage the Union in dialogue concerning his working conditions. "The duty of fair representation implies some consideration of the views of various groups of employees and some access for communication of those views, but there is no requirement that formal procedures be established." (Service Employees International Union, Local 99 (Kimmett) (1979) PERB Decision No. 106 (citing Letter Carriers, Branch 6000 v. NLRB (1979) 595 .2d 808, 813; Waiters Union, Local 781 v. Hotel Association (D.C. Cir. 1974) 498 F.2d 998, 1000).) The Union is not obligated to offer unit members of a specific avenue communication so long as some means are available. The amended charge does not allege that the Union refused to offer the Charging Party other means to communicate his opinion on the terms and conditions of employment. Therefore, the charge does not establish that the Union failed to allow the Charging Party the opportunity to express his views.

In addition, the charge does not establish how the Union's refusal to allow the Charging Party to serve on its Representative Council substantially affected his relationship with the District. In order to meet the substantial impact standard, the conduct at issue must implicate more than "solely the internal relationship of the employee and the union involved." (California State Employees Association (Hard, et al.) (1999) PERB Decision No. 1368-S.) As stated in my June 28, 2006 letter, the Board has expressly held that exclusion from running for union office, without more, is insufficient to demonstrate the necessary substantial impact. Since the amended charge has not provided additional facts demonstrating the impact on the Charging Party's relationship with the District, the charge does not state a prima facie case.

The amended charge also reasserts the argument that the Union's conduct violated the Charging Party's right of free association under the First Amendment to the United States Constitution. I explained in my June 28, 2006 letter that PERB does not have jurisdiction to decide the constitutionality of the Union's actions. In response, the amended charge contends that it was necessary to raise this constitutional issue with PERB if the Charging Party wished to pursue the claim in court. In support, the Charging Party cites the concurring opinion in Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292. In that case, Justice White stated that, if a dispute with a union is covered under a private arbitration agreement, then the arbitration procedure should be used before resorting to the court system. (Id. at 1078.) The purpose of the doctrine is to encourage "private rather than judicial resolution of disputes." (Clayton v. International Union, United Automobile, Aerospace, & Agricultural Implement Workers of America (1981) 451 U.S. 679, 699.) However, PERB does not have jurisdiction to determine whether the U.S. Constitution was violated. For this reason, the charge is dismissed.

Right to Appeal

Pursuant to PERB Regulations,[2] the Charging Party 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 during a regular PERB business day. (Regulations 32135(a) and 32130; see also Government Code section 11020(a).) A document is also considered "filed" when received by facsimile transmission before the close of business 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
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

If the Charging Party files 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.) The document will be considered properly "served" when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also be concurrently served via facsimile transmission on all parties to the proceeding. (Regulation 32135(c).)

Extension of Time

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

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 _____
Eric J. Cu
Regional Attorney

Attachment

cc: Diane Ross

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

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June 28, 2006

Adrian Maaskant, Teacher

Re: Adrian Pieter Maaskant v. Kern High Faculty Association
Unfair Practice Charge No. LA-CO-1212-E
WARNING LETTER

Dear Mr. Maaskant:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on August 31, 2005. The charge alleges that the Kern High Faculty Association (Union) violated the Educational Employment Relations Act (EERA)[1] by not allowing the Charging Party to serve on the Union's Representative Council. The charge requested that the case be placed in abeyance until the resolution of case number LA-CO-1168-E. On September 19, 2005, I granted that request. On April 10, 2006, the Board issued decision number 1834, which concerned the appeal of case number LA-CO-1168-E. On May 22, 2006, per your request, I informed you that your case would remain in abeyance until June 19, 2006.

At the beginning of the 2005-2006 school year, the Union sought an individual to serve on its Representative Council. The position is responsible for disseminating Union information to the school campus where the representative is employed. Charging Party volunteered for the position but on August 22, 2005, was informed that he was ineligible because he is an agency-fee payer. Whitney Weddel, a Union member volunteered and was chosen for the position.

The charge requested the opportunity to further brief the matter at a later date. On June 14, 2006, Charging Party filed another statement alleging that the Union's actions violated the Constitutional right to free association.

Discussion:

The charge requested the case be placed in abeyance until the resolution of LA-CO-1168-E. In Kern High Faculty Association, CTA/NEA (Maaskant) (2006) PERB Decision No. 1834, the Board dismissed LA-CO-1168-E without leave to amend. In that case, the Board held that the

[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.

Union did not breach its duty of fair representation when it did not place notice of a ratification meeting in the charging party's mailbox because the charging party was otherwise informed of the meeting and was given the opportunity to provide input. The Board further held that it was not a violation of EERA to deny the charging party, an agency fee payer, the right to vote in ratifying a collective bargaining agreement because non-members are not entitled to vote and charging party had the opportunity to express his views. (Id.)

In this case, the charge alleges that the Union's decision not to allow the Charging Party to serve on the Representative Council breached the Union's duty of fair representation, and discriminated against him based on his status as an agency fee payer.

PERB has limited jurisdiction over cases involving internal union affairs. The Board has held that an employees EERA protected right to form, join, and participate in the activities of employee organizations for matters concerning employer-employee relations does not directly apply to the internal relationship between a union and its members. (Service Employees International Union, Local 99 (Kimmett) (1979) PERB Decision No. 106.) Rather, the Board found that EERA simply protects employees' rights to be represented by employee organizations in employment matters. (Id.) For this reason "matters concerning internal union affairs are generally immune from review, unless they have a substantial impact on the relationships of unit members to their employers so as to give rise to a duty of fair representation, or involve retaliations for protected activity." (United Teachers of Los Angeles (Seliga) (1998) PERB Decision No. 1289 (citing San Francisco Community College District Federation of Teachers (Kidd and Hendricks) (1995) PERB Decision No. 1084).)

Regarding union officer positions, "[p]articipation in union elections is an internal union affair. The Board traditionally has refused to interfere in the internal affairs of an employee organization unless those affairs impact the member's relationship with his/her employer." (California School Employees Association & its Chapter 36 (Peterson) (2004) PERB Decision No. 1733 (citing California State Employees Association (Barker & Osuna) (2003) PERB Decision No. 1551-S; Service Employees International Union, Local 99 (Kimmett) (1979) PERB Decision No. 106) (other citations omitted).)

In Seliga, supra., the Board held that it did not have jurisdiction to hear a duty of fair representation claim concerning a union' s decision not to allow the charging party in a chapter chair election because it concerned an internal union matter and the charging party did not demonstrate an effect on the employee-employer relationship. The same is true in this case. The charge does not allege that the Union's decision adversely affected the Charging Party's relationship with his employer. It therefore does not establish that PERB has authority to decide the case.

In Peterson supra., the Board held that it was not unlawful discrimination for a union to deny a union member the right to run for union office because the member did not show any impact on his relationship with his employer and thus did not demonstrate any adverse action. The instant case is analogous. The charge does not state sufficient facts showing the Union's

denial harmed Charging Party's relationship with his employer. Therefore, it does not allege adverse action necessary to state a prima facie case.

Charging Party, by letter dated September 14, 2005, attempts to distinguish the instant case from Peterson, by stating that the charging party in Peterson was a union member, while in this case, he is a agency fee payer. The status of the bargaining unit member has no bearing on the Board's analysis in Peterson. In that case, the Board based its decision on the relative deference given to unions on internal affairs, as delineated in Kimmett supra., and the failure of the charge to assert an effect on the employee-employer relationship. Other differences aside, the instant case is similar to Peterson in these two key aspects, and like the charging party in Peterson, does not state a prima facie case.

Charging Party also distinguishes this case from Peterson because this case alleges a violation of Charging Party's right to free association protected by the First Amendment of the United States Constitution. PERB is a state agency designed to protect employees, employee organizations, and employers from violations of organizational and collective bargaining rights guaranteed by state labor laws. (See Pacific Legal Foundation v. Brown (1981) 29 Cal.3d, 168, 198; Banning Teachers Assoc. v. PERB (1988) (44 Cal.3d 799, 804.) PERB does not have the authority to decide the constitutionality of any entity's actions or decisions and is without jurisdiction over this aspect of the charge.

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 July 6, 2006, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Eric J. Cu
Regional Attorney

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