

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



W. SLATER HOLLIS,)	
)	
Charging Party,)	Case No. LA-CE-222-H
)	
v.)	PERB Decision No. 710-H
)	
CALIFORNIA STATE UNIVERSITY)	December 21, 1938
(POMONA),)	
)	
Respondent.)	

Appearances: Dr. W. Slater Hollis, on his own behalf; William G. Knight, Attorney, for California State University.

Before Hesse, Chairperson; Porter, Craib and Shank, Members.

DECISION AND ORDER

This case is before the Public Employment Relations Board (Board) on appeal by Charging Party of the Board agent's dismissal, attached hereto, of his charge that the Respondent violated section 3571, subdivisions (a), (c) and (d) of the Higher Education Employer-Employee Relations Act. We have reviewed the dismissal and, finding it to be free of prejudicial error, adopt it as the Decision of the Board itself.

The unfair practice charge in Case No. LA-CE-222-H is hereby DISMISSED WITHOUT LEAVE TO AMEND.

By the BOARD¹

¹Member Camilli did not participate in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Headquarters Office

1031 18th Street
Sacramento, CA 95814-4174
(916) 322-3088



September 30, 1988

Dr. W. Slater Hollis, Ph.D., J.D.

Re: W. Slater Hollis v. California State University
System. Case No. LA-CE-222-H - Amended Charge
DISMISSAL AND REFUSAL TO ISSUE COMPLAINT

Dear Dr. Hollis:

Your amended charge was filed on June 28, 1988. It alleges violations of the Higher Education Employer-Employee Relations Act (HEERA) sections 3571(a), (c) and (d).

Essentially, you have alleged that the employer had entered into an illegal agreement with the exclusive representative. You allege that the employer interfered with and met and conferred in bad faith with the exclusive representative. You base this allegation on your dissatisfaction with certain provisions of the agreement.

You alleged in a companion charge (LA-CO-15-H) against the exclusive representative that it had breached its duty of fair representation because it created a two-tier Faculty Early Retirement Program (FERP). The organization, faced with a proposal to completely eliminate the program, negotiated a two-level FERP, i.e., FERP would be available to all faculty members except those in hard to recruit/replace disciplines. You were in a designated hard to recruit/replace discipline, business. A warning letter was issued on this charge.

Dr. W. Slater Hollis, Ph.D., J.D.
September 30, 1988
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You believe that the employer entered into a collusive contract to your detriment. You believe that the employee organization committed an unfair practice in doing so and you believe that the employer likewise committed an unfair practice.

I indicated to you in my attached letters dated August 30, 1988 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 that would correct the deficiencies explained in that letter, you should amend the charge accordingly. You were further advised that unless you amended the charge to state a prima facie case, or withdrew it prior to September 29, 1988, the charge would be dismissed.

I have not received either a request for withdrawal or a second amended charge. I am therefore dismissing the charge based on the facts and reasons contained in my August 30, 1988 letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, you may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal (California Administrative Code, title 8, section 32635(a)). To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing (California Administrative Code, title 8, section 32135). Code of Civil Procedure section 1013 shall apply. The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty calendar days following the date of service of the appeal (California Administrative Code, title 8, section 32635(b)).

Dr. W. Slater Hollis, Ph.D., J.D.
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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 California Administrative Code, title 8, section 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

Extension of Time

A request for an extension of time in which to file a document with the Board itself must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three 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 (California Administrative Code, title 8, section 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,

~~CHRISTINE A~~ CHRISTINE A. BOLOGNA
General Counsel

By ~~John W. Spittler~~
Ass Assistant General Counsel

Attachment.

cc: William G. Knight, Assistant General Counsel
Office of the General Counsel
The California State University
400 Golden Shore
Long Beach, CA 90802

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PUBLIC EMPLOYMENT RELATIONS BOARD

1031 18TH Su
Sacramento, CA 95814 4174



August 30, 1983

Dr. W. Slater Hollis, Ph.D., J.D.

Re: W. Slater
v. California State University System,
Case No. LA-CE-222-II - Warning Letter

Dear Dr. Hollis:

Your amended charge was filed on June 28, 1988. It alleges violations of the Higher Education Employer-Employee Relations Act (HEERA) sections 3571(a), (c) and (d).

Essentially, you have alleged that the employer had entered into an illegal agreement with the exclusive representative. You allege that the employer interfered with and met and conferred in bad faith with the exclusive representative. You base this allegation on your dissatisfaction with certain provisions of the agreement.

You alleged in a companion charge (LA-CO-15-H) against the exclusive representative that it had breached its duty of fair representation because it created a two-tier Faculty Early Retirement Program (FERP). The organization, faced with a proposal to completely eliminate the program, negotiated a two-level FERP, i.e., FERP would be available to all faculty members except those in hard to recruit/replace disciplines. You were in a designated hard to recruit/replace discipline, business. A warning letter was issued on this charge.

You believe that the employer entered into a collusive contract to your detriment. You believe that the employee organization committed an unfair practice in doing so and you believe that the employer likewise committed an unfair practice.

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In e recent case, Oxnard School District (Gorcey/Tiipp). (1988) PERB Decision No. 667, the Board held that individuals did not have legal standing to bring a charge of bad faith bargaining against an employer, i.e., only the exclusive representative can bring such a charge.

The Board based its analysis on Government Code section 3543.5(c) which makes it unlawful for a public school employer to, "refuse or fail to meet and negotiate in good faith with an exclusive representative." (Emphasis added.)

Likcv?ise, Government Code section 3571(c) makes it unlawful for a higher education employer to, "refuse or fail to engage in meeting and conferring with an exclusive representative." (Emphasis added.)

The similarity of the statutes is obvious. As is the applicability of the Oxnard School District decision. Accordingly you, as an individual, cannot bring a charge pursuant to section 3571(c).

An interference charge, pursuant to section 3571(a) must demonstrate,

[a] nexus . . . between the employer's conduct and the exercise of a protected right resulting in harm or potential harm to that right which, in balance, outweighs the employer's proffered business justification.

CSEA v. Regents of
University of
California (19 83) PERB
Decision No. 308-H,
p. 8.

In Regents of University of California, the employee organization charged that the employer committed an unfair practice by limiting the number of representatives available to employees utilizing grievance procedures. As to the section 3571(a) charge, the Board stated,

. . . in order to sustain its charges, CSEA is required to demonstrate that, as a result of the university's limitation on representatives, the rights of the employees were harmed. However, merely demonstrating that multiple representatives would provide better representation is insufficient. The University's rule is unlawful if the impact of it is to deprive employees of their statutory rights to effectively present their grievances.

Regents of the University
of California, supra,
PERB Decision No. 308-H,
pp. 8-9.

The Board went on to hold that:

[t]o be violative of HEERA, the potential for harm must emerge in the context of reasonably anticipated circumstances from which it is logical to infer or expect that harm to employees' rights would result.

Regents of University of
California, supra, PERB
Decision No. 308-H, pp.
14-15.

No protected right has been demonstrated by you. Participation in FERB is not a protected right. Your exclusive representative did not commit an unfair practice by negotiating a two-level FERB plan.

Lastly, you have alleged an unfair practice has occurred pursuant to section 3571(d). However, outside of the bare allegation, you have presented no factual basis for the charge.

while citing much authority, you have failed to allege how the employer committed an unfair practice within the legal analysis reviewable by PERB.

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For these reasons, the charge as presently written does not state a prima facie case. If you feel that there are any factual inaccuracies in this letter or any additional facts which would correct the deficiencies explained above, please amend the charge accordingly. The amended charge should be prepared on a standard PERB unfair practice charge form clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before September 15, 1988, I shall dismiss your charge. If you have any questions on how to proceed, please call me at (916) 323-8015.

Sincerely,

John W. Spittler
Assistant General Counsel

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