

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



NORMAN P. BARTH,)
)
Charging Party,) Case No. S-CE-1382
)
v.) PERB Decision No. 867
)
LOS RIOS COMMUNITY COLLEGE DISTRICT,) February 13, 1991
)
Respondent.)
_____)

Appearances: Norman P. Barth, on his own behalf; Susanne M. Shelley, General Counsel, for Los Rios Community College District.

Before Hesse, Chairperson; Shank and Cunningham Members.

DECISION AND ORDER

HESSE, Chairperson: This case is before the Public Employment Relations Board (Board) on appeal by Norman P. Barth of the Board agent's dismissal, attached hereto, of his charge that the Los Rios Community College District violated section 3543.5(d) of the Educational Employment Relations Act (EERA).¹ 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. S-CE-1382 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Shank and Cunningham joined in this Decision.

¹EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916)322-3198



December 12, 1990

Norman P. Barth

Re: Norman P. Barth v. Los Rios Community College District,
Unfair Practice Charge No. S-CE-1382

Dear Mr. Barth:

On November 6, 1990, you filed an unfair practice charge against the Los Rios Community College District alleging a violation of Government Code section 3543.5(d). Specifically, you have alleged that the District has provided illegal support to an employee organization.

I indicated to you in my attached letter dated November 26, 1990, 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 December 3, 1990, the charge would be dismissed.

I received your amended charge on December 3, 1990. You now allege that the District has violated Government Code section 3543.5 by failing to provide a mechanism verifying the use of released time. In support, you cite Government Code section 3543.1(c), sections 32992, 32993 and 32995 of subchapter 8 of the California Code of Regulations and the recent decision of the Ninth Circuit Court of Appeals in *Grunwald v. San Bernardino City Unified School District* (1990) 90 Daily Journal D.A.R. 12318.

For the reasons provided in my prior letter, the negotiation of released time is not a violation of Government Code section 3543.5. Further, neither EERA nor existing caselaw requires that an employer supervise or verify a union's use of negotiated released time. Neither the cited agency fee regulations nor the

December 12, 1990

Page 2

Grunwald agency fee case impose such a duty.¹ Released time is not a form of agency fees. Released time is paid for by the District. An agency fee agreement requires an employee, as a condition of employment, to either join an employee organization or pay a service fee. Such fees affect a nonunion employee's First Amendment rights and thus require certain procedural protections (Chicago Teachers Union v. Hudson (1986) 475 U.S. 301; Grunwald, supra. p. 12319). In your charge, there is no issue regarding fees collected from employees and no constitutional rights are affected. Accordingly, agency fee cases and regulations are inapposite in evaluating the merits of your charge.

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 Code of Regulations, 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 Code of Regulations, title 8, section 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

¹You appear to couple agency fees with the union's use of released time by stating "Since the money for released time comes, under the contract, from the faculty salary portion of the District's budget, it is partially funded by nonmember's money."

December 12, 1990
Page 3

with the Board itself. (See California Code of Regulations, 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 **Code of Regulations**, 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,

JOHN W. SPITTLER
General Counsel

By _____
Bernard McMonigle
Regional Attorney

Attachment

cc: Susanne M. Shelley

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916) 322-3198



November 26, 1990

Norman P. Barth

Re: Norman P. Barth v. Los Rios Community College District.
Unfair Practice Charge No. S-CE-1382
WARNING LETTER

Dear Mr. Barth:

On November 6, 1990, you filed an unfair practice charge against the Los Rios Community College District alleging a violation of Government Code section 3543.5(d). Specifically, you have alleged that the District has provided illegal support to an employee organization. This letter reflects the information I gave you by telephone on November 20, 1990.

Your charge reveals the following. The Los Rios Community College District and the Los Rios College Federation of Teachers (LRCFT) are parties to a collective bargaining agreement covering the time period July 1, 1990, to June 30, 1993. Article 20 of that agreement is titled, "Federation Rights" and states the following:

The District shall provide sixty (60) formal hours annually of reassigned time for LRCFT representatives for the purpose of representation in matters involving grievance and contract administration. By no later than thirty (30) calendar days following the signing of this Agreement, LRCFT will designate in writing to the District representative the members who will be reassigned. Substitutions may be made within the academic year on a ten (10) days' notice by LRCFT.

Government Code section 3543.1(c) states that "a reasonable number of representatives of an exclusive representative shall have the right to receive reasonable periods of released time without lost compensation when meeting and negotiating and for the processing of grievances." In Anaheim Union High School District (1981) PERB Decision No. 177, the Board determined that

November 26, 1990

Page 2

released time is a mandatory subject of negotiations. The Board found that the Legislature had "considered the matter of released time too important to the statutory scheme to be left either to the employer's discretion or entirely to the vagaries of negotiations. Therefore, a minimum released time standard was established, and thus, in effect, a standard against which the parties good faith in negotiating on the subject could be measured." (Id. at p. 11.) The Board concluded that released time is a subject in which the District is obligated to negotiate in good faith.

The facts as you have stated them in this case merely show that the District met its obligation to bargain over release time. Agreement over such release time does not constitute unlawful support for an employee organization. Rather, the subject is within the proper scope of bargaining. Accordingly, your 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 any additional facts that would correct the deficiencies explained above, please amend the charge accordingly. The amended charge should be prepared on a standard PERB unfair practice charge form clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and must be signed under penalty of perjury by the charging party. The amended charge must be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before December 3, 1990, I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198.

Sincerely,

Bernard McMonigle
Regional Attorney