

The Board has reviewed the Board agent's warning letter and dismissal letters, and finding them to be free of prejudicial error, adopts them as the decision of the Board itself.

The unfair practice charge in Case No. S-CO-282 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairperson Hesse and Member Caffrey joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



August 21, 1992

Ms. Mildred Largent

Re: Mildred Largent v. Kings Canyon Educational Association
Unfair Practice Charge No. S-CO-282

DISMISSAL LETTER

Dear Ms. Largent:

On June 1, 1992, you filed the above-referenced charge alleging that the Kings Canyon Educational Association violated the Educational Employment Relations Act section 3543.6(b). Specifically, you have alleged that the Kings Canyon Educational Association (KCEA) has violated your rights by requiring that you pay a nonmember "personal convictions" fee the equivalent of Association dues.

On August 20, 1992, I received your amended charge. In the amended charge you contend that, under the collective bargaining agreement between the Kings Canyon Unified School District and the Kings Canyon Educational Association, the service fee is not defined as the equivalent of dues. For the reasons stated in my letter of August 12, 1992, it appears that the service fee is an amount equal to membership dues and general assessments. You also contend that, under existing case law and PERB regulations, "dues and service fees are not the same amount" regardless of the collective bargaining agreement. However, under the Educational Employment Relations Act a service fee (or agency fee) may equal a union's standard initiation fee, periodic dues and general assessments (Gov. Code 3540.1(i)(2)). It is only when a nonmember service fee payer objects to paying a fee which includes purposes beyond a union's representational obligations that his fee must be reduced. (Cumero v. Public Employment Relations Bd. (1989) 49 Ca.3d 575, 589-590.) Accordingly, the initial service fee may be the equivalent of dues. As explained in my letter of August 12, this fee reduction is required for agency/service fee payers and not for those choosing to pay a charitable contribution. Therefore, I am dismissing your charge based on the facts and reasons contained in my letter of August 12, 1992.

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. (Cal. Code of Regs., tit. 8, sec. 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 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. (Cal. Code of Regs., tit. 8, sec. 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 (20) calendar days following the date of service of the appeal. (Cal. Code of Regs., tit. 8, sec. 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 Cal. Code of Regs., tit. 8, sec. 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 (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. (Cal. Code of Regs., tit. 8, sec. 32132.)

PUBLIC EMPLOYMENT RELATIONS BOARD



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



August 12, 1992

Ms. Mildred Largent

Re: Mildred Largent v. Kings Canyon Educational Association
Unfair Practice Charge No. S-CO-282

WARNING LETTER

Dear Ms. Largent:

On June 1, 1992, you filed the above-referenced charge alleging that the Kings Canyon Educational Association violated the Educational Employment Relations Act section 3543.6(b). Specifically, you have alleged that the Kings Canyon Educational Association (KCEA) has violated your rights by requiring that you pay a nonmember "personal convictions" fee the equivalent of Association dues.

My investigation reveals the following. The Kings Canyon Educational Association and the Kings Canyon Unified School District negotiated an agency shop agreement in the fall of 1991. The agreement provides three options. Individuals are free to choose membership in the KCEA or they may choose to be nonmember agency (service) fee payers to the union. Additionally, if because of personal beliefs an individual chooses not to give financial support to the Association s/he may pay a fee "equal to such dues or service fee" directly to charitable organizations listed in the agreement. You chose to pay a fee to a charitable organization.

On or about January 14, 1992, you made a payment to charity the equivalent of full union dues. On or about January 17, you received the "Hudson notice" that public sector labor organizations forward to nonmember agency (service) fee payers.

1

notice informs nonmember agency (service) fee payers of that amount of dues which is used for political and other nonrepresentational purposes. An objecting fee payer may then have his fee reduced by that amount. Otherwise the nonmember continues to pay the full fee (the equivalent of dues) to the Association.

August 12, 1992
Page 2

On February 2, 1992, you sent a letter to KCEA's parent organization, the California Teachers Association, objecting to payment of any amount more than that required of agency (service) fee payers. On March 23, the KCEA president informed you that you must pay the equivalent of full dues to the charity. You allege that "since dues and service fee are not equal and apply to members and nonmembers respectively, I should pay an amount equal to the service fee."

Article 6 of the collective bargaining agreement between the District and the Association is titled, "Professional Dues or Fees and Payroll Deductions." Paragraph 3 of the article describes the option available to those individuals who choose to pay nonmember fees to the Association. That option states that a nonmember "shall either become a member of the Association or pay to the Association a service fee in an amount equal to unified membership dues and general assessments." Paragraph 4 provides that those nonmembers choosing the charity option shall pay a "sum equal to dues or service fee." Accordingly, it appears that under the collective bargaining agreement the amount of service fee is an amount equal to Association dues and assessments.

You state that on January 17, 1992, you received the "Hudson notice." You then sought to have your charitable contribution reduced by that amount which agency (service) fee payers may have their fees reduced.

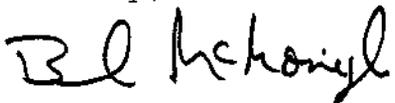
It is generally true that an objecting agency fee (or service fee) payer may be only required to pay for that share of a labor organization's costs of performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues. Cumero v. Public Employment Relations Board (1989) 49 Cal.3d 575, at p. 588; Ellis v. Railway Clerks (1984) 466 U.S. 435, at p. 447. Nonmember employees have a right to "prevent the union's spending a part of their required service fees to contribute to political candidates and to express political views unrelated to its duties as exclusive bargaining representative." Abood v. Detroit Bd. of Education (1977) 431 U.S. 209, 234. (Emphasis added.) To prevent the compulsory subsidization of nonchargeable activities, certain procedural safeguards must be in place prior to a union's collection of an agency fee. Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292. The California Supreme Court has stated, "The procedures prescribed in Chicago Teachers, supra, 475 U.S. 292, for protecting nonmembers' constitutional rights against a union's improper uses of their agency fees are likewise

August 12, 1992
Page 3

sufficient and appropriate for protection of nonmember employees' statutory rights to prevent improper use of their service fees collected under an EERA organizational security arrangement." (Emphasis added.) Thus, protections afforded agency fee payers are devised to avoid compulsory subsidization of nonchargeable activities of a labor organization. The money which you pay to the charitable fund does not subsidize such nonchargeable activities. Accordingly, the protections afforded agency fee payers are not applicable and the Association need not reduce the amount of charitable donation. Therefore, 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 additional facts which 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 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 **August 19, 1992**, I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198.

Sincerely,



Bernard McMonigle
Regional Attorney