

22 PERC ¶ 29147

LONG BEACH COMMUNITY COLLEGE DISTRICT

California Public Employment Relations Board

California School Employees Association, Charging Party, v. Long Beach Community College District, Respondent.

Docket No. LA-CE-3824

Order No. 1278

August 14, 1998

Before Caffrey, Chairman; Johnson and Dyer, Members

Interference -- Unlawful Support -- Access To Employees -- 72.18, 72.25 College district engaged in unlawful support by permitting representatives of rival union to conduct informational meeting during week-long in-service training for college safety officers. Evidence showed that meeting was listed on district's official schedule immediately following mandatory training session in classroom reserved for training. Further, meeting was scheduled one day before incumbent became vulnerable to decertification. District's action created impression that meeting was part of mandatory training, or that district supported union's presentation. Despite district's announcement that attendance was voluntary, and even though district took no active part in meeting, totality of circumstances rendered district's conduct unlawful.

APPEARANCES:

A. Alan Aldrich, Senior Labor Relations Representative, for California School Employees Association; Parker, Covert & Chidester by Spencer E. Covert, Attorney, for Long Beach Community College District.

Decision

DYER, Member:

This case comes before the Public Employment Relations Board (PERB or Board) on exceptions filed by the California School Employees Association (CSEA) to a Board administrative law judge's (ALJ) proposed decision [see 22 PERC 29035]. In its charge and complaint, CSEA alleged that the Long Beach Community College District (District) violated section 3543.5(a), (b) and (d) of the Educational Employment Relations Act (EERA)¹ by placing a severance presentation by a rival employee organization known as the Long Beach Community College Police Officer's Association (POA) on the agenda for a week of mandatory inservice training. The ALJ held a formal hearing on December 9, 1997 and rendered a proposed decision dismissing the charge and complaint on February 10, 1998.

The Board has reviewed the entire record in this case, including the proposed decision, the hearing transcripts, CSEA's exceptions, and the District's response thereto. For the reasons that follow, the Board reverses the ALJ's proposed decision and finds that the District's conduct violated section 3543.5(a), (b) and (d).

Findings of Fact

The District is a public school employer within the meaning of the EERA. CSEA is an employee organization and the exclusive representative of the District's classified bargaining unit, including the 11 or 12 College Safety Officers (CSO) employed by the District.² The District and CSEA were parties to a collective bargaining agreement (CBA) that was in effect during the relevant

time period. The CBA expired on June 30, 1997.³

POA is an employee organization attempting to sever CSOs from the District's classified bargaining unit and undertake their representation. At the time of the alleged unfair practice, approximately five (5) of the District's CSOs were members of the POA.

During the week of February 24-28, the District required CSOs to attend forty (40) hours of in-service training at the Long Beach City Police Academy (Academy). The in-service training was taught by District supervisors. The District used a single Academy classroom for all of the training.

Shortly before the training, POA president Vernon Gates (Gates) approached the District and asked that he be allowed to make a presentation highlighting the virtues of the POA. The District informed Gates that such a presentation could be made only during non-work time. Ultimately, the District agreed to allow Gates to make his POA presentation after the close of training on Friday, February 28.⁴

Prior to February 24, the District prepared and distributed an official training schedule for the week. The schedule covered the period from 8:00 a.m. to 5:00 p.m. each day. For Monday, Tuesday, Wednesday and Thursday, the schedule indicates a one-hour lunch period from 12:00 p.m. to 1:00 p.m. For Friday, the schedule indicates a two-hour lunch period from 12:00 p.m. to 2:00 p.m. and a POA presentation from 4:00 p.m. to 5:00 p.m.

The parties agree that the training on Monday, Tuesday, Wednesday and Thursday ran from 8:00 a.m. through 5:00 p.m. with a one-hour "duty free" lunch from 12:00 p.m. to 1:00 p.m. CSOs were free to take lunch wherever they chose, so long as they returned to the Academy in time for the 1:00 p.m. class. The ALJ found that this schedule differed from the CSOs' regular workday, which spanned eight hours with no duty-free lunch period.⁵

The training schedule was different on Friday, February 28. On that day, the District required all CSOs to attend a barbecue at the Academy between 12:00 p.m. and 2:00 p.m.⁶ At 2:00 p.m., Lieutenant Paul Chastain (Chastain) presented two hours of auto theft training. The auto theft training ended at 4 p.m., the time when the POA presentation was scheduled to begin.

The parties presented conflicting testimony regarding the events immediately preceding the POA presentation. Several District witnesses testified that, upon the completion of the auto theft training, Chastain indicated that the in-service training was complete and that the CSOs were free to go. Gates testified that he made a similar announcement when he began the POA presentation. On the other hand, two CSEA witnesses testified that they did not hear either Chastain or Gates announce that the training had ended or that the POA presentation was voluntary. A third CSEA witness testified that both Gates and Chastain announced that the POA presentation was mandatory.

Faced with this conflict, the ALJ credited the District's witnesses, specifically relying on the testimony of CSO Art Rupio (Rupio). Rupio testified that Chastain announced that the POA presentation was not mandatory and that CSOs were free to leave. Because he had no interest in the POA presentation, Rupio left the classroom and went home prior to the start of the POA presentation. Based on all the testimony, the ALJ found that the POA presentation was not mandatory and that the District announced that fact to the CSOs prior to the POA presentation.

CSEA witnesses also testified that the POA circulated a petition to decertify CSEA during the presentation.⁷ These witnesses testified, however, that the petition was merely a legal-sized sheet of paper with CSOs names typed below signature lines. The witnesses testified that the petition contained no text identifying the purposes of the signatures. All CSEA witnesses later signed a petition for decertification filed by POA on March 20 and entered into evidence at the hearing. Noting that the POA meeting occurred outside of the window period for decertification, the ALJ found that no petition was circulated during the POA meeting. (See EERA section 3544.7(b)(1).)⁸

There was also some testimony that the POA attempted to collect dues during the presentation. Although the ALJ found that Gates made some announcement regarding the amount of dues paid by POA members, the ALJ found that there was insufficient evidence in the record to find that POA actually attempted to collect dues during the presentation.

Proposed Decision

The ALJ identified the following issue:

Did the Long Beach Community College District provide unlawful assistance to the POA in violation of the EERA?

The ALJ determined that the crux of this case lay in determining whether the CSOs were actually on duty during the POA presentation. The ALJ found that the workday on Friday, February 28 ran from 8:00 a.m. through 4:00 p.m., including a two-hour mandatory luncheon. Accordingly, the ALJ found that the CSOs were not on paid status during the POA presentation. Likewise, the ALJ credited District witnesses who testified that the CSOs were dismissed prior to the beginning of the POA meeting and that Chastain and Gates informed the CSOs that they were free to leave before the presentation.

The ALJ noted that EERA section 3543.5(d) precludes the District from dominating or interfering with the formation or administration of any employee organization, or contributing financial or other support to, or in any way encouraging employees to join any organization in preference to another. (*Santa Monica Community College District* (1979) PERB Decision No. 103 at p. 22 (*Santa Monica*) (noting that test is whether employer's conduct tends to influence employee choice).) As noted above, the ALJ found that the POA meeting took place outside working hours and was not mandatory. In addition, the ALJ found that the CSOs were not asked to sign a petition or to pay dues during the POA presentation.

The ALJ also noted that EERA requires the District to provide employee organizations, such as POA, access to unit members. (EERA sec. 3543.1(b).)9 Because the District merely scheduled the non-mandatory POA meeting and did not participate in the meeting, the ALJ found that the District's accommodation did not constitute influence of choice or stimulus in any direction. Accordingly, the ALJ held that the District's conduct did not constitute unlawful support for the POA and dismissed the charge and complaint.

Discussion

It is well established that a public school employer may not encourage employees to join one employee organization over another. (EERA sec. 3543.5(d).) The Board has found that Section 3543.5(d) imposes on the employer an unqualified requirement of strict neutrality with respect to employee choice of representation. (*Sacramento City Unified School District* (1982) PERB Decision No. 214 at p. 3, citing *Santa Monica*.) Where the natural consequence of an employer's conduct is to encourage or discourage membership in a labor organization, the Board presumes that the employer intended that result. (*Azusa Unified School District* (1977) EERB Decision No. 38,10 proposed dec. at p. 8.)

In this case, the District included POA's severance presentation on the official schedule for a week of mandatory peace officer training. The District scheduled the POA presentation immediately following a mandatory training session in the Academy classroom reserved for the training. Further, the District scheduled the POA presentation just one day before CSEA became vulnerable to decertification. (See EERA sec. 3544.7(b)(1).) We find that the District's actions gave the impression that the POA presentation was part of the mandatory training or, at the very least, that the District supported the POA presentation. This is precisely the sort of conduct that would lead a reasonable person to conclude that the District favored POA over CSEA. (See *Regents* at p. 655 (noting that the University could not allow the union to use official banner space unless space was also used by competing unions); *Clovis Unified School District* (1984)

PERB Decision No. 389 at p. 10.)

We turn now to the question of whether the District took sufficient remedial actions to cure the appearance of unlawful support for POA. (See *Inglewood Unified School District* (1987) PERB Decision No. 624 at p. 12 (noting that honestly given retraction can erase effects of prior coercive statement).) We agree with the ALJ's finding that Chastain informed CSOs that the POA meeting was voluntary and that they were free to go. Because ALJs sit in a better position to observe the demeanor of witnesses, the Board generally defers to its ALJs' credibility determinations. (*Duarte Unified Education Association (Fox)* (1997) PERB Decision No. 1220 at p. 3; *Los Rios College Federation of Teachers (Deglow)* (1996) PERB Decision No. 1133 at p. 6.) The question remains, however, whether Chastain's statement regarding the voluntary nature of the POA presentation was sufficient to undo the effects of the District's prior actions. We hold that it was not.

As noted above, EERA requires that the District maintain an appearance of strict neutrality in its dealings with employee organizations. This is especially true when the identity of the exclusive representative is at issue. Here, on the eve of the window period, the District produced a training schedule. This document included a briefing by a rival employee organization. Although the District later informed the CSOs that the POA presentation was not mandatory, it made no effort to retract the offending training schedule and took no other action to assuage the appearance that it supported the POA's decertification effort. Accordingly, we find that, under the totality of the circumstances, the District's conduct constituted a breach of its duty of strict neutrality.

Order

Upon the findings of fact, conclusions of law, and the entire record in this case, it is found that the Long Beach Community College District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3543.5(a), (b) and (d). The District violated this section by encouraging unit members to join a rival employee organization at the expense of the exclusive representative.

Pursuant to EERA section 3541.5(c), it is hereby ORDERED that the District, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Encouraging employees to join any employee organization in preference to another by placing the meetings of one employee organization on the official schedule for mandatory in service training without making similar arrangements for the California School Employees Association.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE EERA:

1. Within ten (10) days following the date this Decision is no longer subject to appeal, post at all work locations where notices to classified employees customarily are posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the District, indicating the District will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure the Notice is not reduced in size, altered, defaced or covered with any other material.

2. Make written notification of the actions taken to comply with this Order to the Los Angeles Regional Director of the Public Employment Relations Board, in accord with the regional director's instructions.

Chairman Caffrey and Member Johnson joined in this Decision.

1 EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3543.5 provides, in relevant part:

It shall be unlawful for a public school employer to do any of the following:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

2 The record is unclear regarding the exact number of CSO's employed by the District at the time of the alleged unfair practice.

3 Unless otherwise indicated, all dates refer to 1997.

4 District witnesses testified that it would have permitted CSEA to make a similar presentation upon request. There is no evidence indicating that CSEA made any such request. (See *Regents of the University of California v. Public Employment Relations Bd.* (1986) 177 Cal.App.3d 648, 655 [223 Cal.Rptr. 127] (*Regents*) (finding that it was immaterial that no other employee organization had expressed interest).)

5 Article XII of the CBA provides for employees to work eight straight hours without a duty-free lunch period.

Article XII, section K of the CBA provides, in relevant part:

Each work shift shall include an unpaid duty-free meal period of not less than one-half (1/2) hour nor more than one (1) hour which, in the case of a seven (7) or eight-hour (8) shift, shall occur approximately at the midpoint of the shift. This provision shall not apply to unit employees working six (6) hours or less.

A unit employee required and authorized to work during his/her lunch period shall receive pay or compensatory time off at his/her rate of time and one-half (1 1/2) for time worked during the lunch period unless he/she is granted time off equivalent to that time worked during the lunch hour on the same day.

6 Although the barbecue lasted until 2:00 p.m., it appears that some CSOs left at approximately 1:30 p.m. to pick up their paychecks from the District personnel office.

7 The record does not contain a copy of this document.

8 Section 3544.7 provides, in relevant part:

(b) No election shall be held and the petition shall be dismissed whenever either of the following exist:

(1) There is currently in effect a lawful written agreement negotiated by the public school employer and another employee organization covering any employees included in the unit described in the request for recognition, or unless the request for recognition is filed less than 120 days, but more than 90 days, prior to the expiration date of the agreement.

9 Section 3543.1 provides, in relevant part:

(b) Employee organizations shall have the right of access at reasonable times to areas in which employees work, the right to use institutional bulletin boards, mailboxes, and other means of communication, subject to reasonable regulation, and the right to use institutional facilities at reasonable times for the purpose of

meetings concerned with the exercise of the rights guaranteed by this chapter.

10 Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board (EERB).E
