

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SERVICE WORKERS LOCAL 715, SEIU,)
AFL-CIO,)
Charging Party,) Case No. SF-CE-2055
v.) PERB Decision No. 1362
MORGAN HILL UNIFIED SCHOOL)
DISTRICT,) December 10, 1999
Respondent.)
_____)

Appearance: Van Bourg, Weinberg, Roger & Rosenfeld by
Vincent A. Harrington, Jr., Attorney, for Service Workers
Local 715, SEIU, AFL-CIO.

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

CAFFREY, Chairman: This case is before the Public
Employment Relations Board (Board) on appeal by the Service
Workers Local 715, SEIU, AFL-CIO (SEIU) of a Board agent's
dismissal (attached) of SEIU's unfair practice charge. In the
charge, SEIU alleged that the Morgan Hill Unified School District
(District) violated section 3543.5(a), (b) and (c) of the
Educational Employment Relations Act (EERA)¹ by refusing to pay a

¹EERA is codified at Government Code section 3540 et seq.
Section 3543.5 states, in pertinent 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

negotiated salary increase to certain bargaining unit members.

The Board has reviewed the entire record in this case including the unfair practice charge, the Board agent's warning and dismissal letters and SEIU's appeal. The Board finds the warning and dismissal letters to be free of prejudicial error and hereby adopts them as the decision of the Board itself, consistent with the following discussion.

DISCUSSION

This case involves a dispute over the application of a wage increase provision agreed to by the parties. In its appeal, SEIU points out that the parties' December 17, 1998, tentative agreement clearly indicates that a 3.95 percent wage increase retroactive to July 1, 1998, is to apply to the entire bargaining unit. Therefore, SEIU argues that the District acted unlawfully when it refused to grant the increase to the classification of Yard Duty Supervisor (YDS) which is in the bargaining unit.

However, the wage increase provision of the parties' final agreement includes language which differs from that of the tentative agreement. The final agreement language indicates that the retroactive 3.95 percent wage increase applies to the salary schedule. The YDS classification is not covered by the salary

this subdivision, "employee" includes an applicant for employment or reemployment.

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

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

schedule.

SEIU asserts that this case presents a "dispute of fact" over the meaning of the agreement which requires a full evidentiary hearing to examine the bargaining history and the intent of the parties in agreeing to the language of the tentative and final agreements. However, where contract language is clear and unambiguous, it is unnecessary to go beyond the plain language to ascertain its meaning. (Marysville Joint Unified School District (1983) PERB Decision No. 314, at p. 9.) In interpreting contract language, the Board examines bargaining history to determine the intent of the parties only if the language of the contract is found to be ambiguous. (Barstow Unified School District (1997) PERB Decision No. 1138b, at pp. 17-18; State of California (Department of Corrections) (1999) PERB Decision No. 1317-S, at p. 8.)

The parties' final agreement clearly indicates that the 3.95 percent wage increase applies to the salary schedule. Since the YDS classification is not covered by the salary schedule, the District acted in accordance with the final agreement when it did not apply the increase to that classification.

ORDER

The unfair practice charge in Case No. SF-CE-2055 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Dyer and Amador joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 439-6940



September 14, 1999

Vincent Harrington
Van Bourg, Weinberg, Roger & Rosenfeld
180 Grand Avenue, Suite 14 00
Oakland, CA 94612

Re: Service Workers Local 715, SEIU, AFL-CIO v. Morgan Hill
Unified School District
Unfair Practice Charge No. SF-CE-2055
DISMISSAL AND REFUSAL TO ISSUE A COMPLAINT

Dear Mr. Harrington:

I indicated to you, in my attached letter dated August 26, 1999, 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 which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to September 2, 1999, the charge would be dismissed. On September 2, 1999, I received a request for extension by facsimile. I left you a voicemail message granting the request, and extended the deadline until September 10, 1999.

I have not received either an amended charge or a request for withdrawal. Therefore, I am dismissing the charge based on the facts and reasons contained in my August 26, 1999, 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. (Cal. Code Regs., tit. 8, sec. 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 before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Cal. Code Regs., tit. 8, sec. 32135(a); see also Cal. Code Regs., tit. 8, sec. 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Cal. Code Regs., tit. 8, sec. 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. (Cal. Code Regs., tit. 8, secs. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 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 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 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 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. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, sec. 32135(c).)

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 Regs., tit. 8, sec. 32132.)

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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
Deputy General Counsel

By
TAMMY L. SAMSEL
Regional Director

Attachment

cc: Earline Fanklin

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 439-6940



August 26, 1999

Vincent A. Harrington
Van Bourg, Weinberg, Roger & Rosenfeld
180 Grand Avenue, Suite 1400
Oakland, CA 94612

Re: Service Workers Local 715, SEIU, AFL-CIO v. Morgan Hill
Unified School District
Unfair Practice Charge No. SF-CE-2055
Warning Letter

Dear Mr. Harrington:

In the above-referenced charge the Service Workers Local 715, SEIU, AFL-CIO (SEIU or Association) alleges the Morgan Hill Unified School District (District) violated the Educational Employment Relations Act (EERA or Act) § 3543.5 (a), (b), and (c) by refusing to pay the bargaining unit a negotiated salary increase.

The parties' added the Yard Duty Supervisors into the bargaining unit represented by SEIU. The parties also negotiated a salary increase in their reopener agreement. The dispute centers on the District's refusal to implement the salary increase for the Yard Duty Supervisors. My investigation revealed the following information.

In December 1998, the parties were in reopener negotiations. On December 17, 1998 SEIU made the following proposal for wages:

Article 4 Wages-3.95% wage increase for bargaining unit, retroactive to 7/1/98. Add, "At P-2, taken in April of 1999, if the ADA is greater than the 1997-98 P-2 of 8794, a percentage amount of the additional revenue (equivalent to 1% of the SEIU salary schedule) will be allocated on the Service Employee's International Union, Local 715 basic salary schedules. Payment will be made on the June 10, 1999 payroll. This increase shall apply exclusively to SEIU Local 715 basic salary schedule."

The parties adopted this proposal as a Tentative Agreement. In its final form, Article 4 of the parties' 1998-1999 Reopener Agreement states :

The salary schedule will reflect a 3.95% wage increase, retroactive to July 1, 1998. At P-2, taken in April of 1999, if the ADA is greater than the 1997-1998 P-2 of 8794, 21% of the additional revenue will be allocated on the SEIU basic salary schedule. Payment will be made on the June 10, 1999 payroll. This increase shall apply exclusively to SEIU Local 715 basic salary schedule.

On January 7, 1998, the parties agreed to include the Yard Duty Supervisors in the bargaining unit exclusively represented by SEIU. The agreement adding the Yard Duty Supervisors to the unit, indicates that only some of the articles of the parties' collective bargaining agreement would be applicable to the Yard Duty Supervisors. The agreement adding the Yard Duty Supervisors to the unit indicates that the collective bargaining agreement's wage provision, Article 4, is not applicable to the Yard Duty Supervisors. Instead, the agreement to include the Yard Duty Supervisors provides, in pertinent part:

The hourly rate of pay for the Yard Duty Supervisor category for the 1997-98 school/year and thereafter until changed with the mutual assent of the parties shall be \$7.20.

The agreement to include the Yard Duty Supervisors in the unit also indicates:

All other terms and conditions of employment for workers employed in the category of Yard Duty Supervisors shall be governed by this Article and District rules. Terms and conditions of employment other than those listed [herein] shall be inapplicable to the category of Yard Duty Supervisor.

The Yard Duty Supervisors are not on the salary schedule. The District refuses to give the Yard Duty Supervisors the 3.95% increase. SEIU alleges the District has bargained in bad faith by refusing to implement the wage increase for the Yard Duty Supervisors. SEIU alleges the bargaining history and the language of the tentative agreement reflect the mutual intent of the parties to grant the salary increase to all represented employees, including the Yard Duty Supervisors.

The above-stated information fails to state a prima facie violation for the reasons that follow.

In determining whether a party has violated EERA section 3543.5 (c), PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process.

(Stockton Unified School District (1980) PERB Decision No. 143.) Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented before the employer notified the exclusive representative and gave it an opportunity to request negotiations. (Walnut Valley Unified School District (1981) PERB Decision No. 160; Grant Joint Unified High School District (1982) PERB Decision No. 196.)

In the instant charge the language of the tentative agreement indicates that the salary " increase shall apply exclusively to SEIU Local 715 basic salary schedule." The Reopener Agreement includes the same language. Thus, it appears the parties did not intend to increase the salaries of employees not on the salary schedule. Moreover, the agreement to include the Yard Duty Supervisors in the bargaining unit also excludes them from the wage provisions covering the other bargaining unit members. Finally, the agreement to include the Yard Duty Supervisors in the bargaining unit indicates the Yard Duty Supervisors will be paid \$7.20 per hour until changed by mutual assent of the parties. No such mutual assent has occurred. Thus, it appears the District is acting in accord with the parties' Reopener Agreement, and this charge fails to state a prima facie violation.

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 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

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of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before September 2, 1999, I shall dismiss your charge. If you have any questions, please call me at (415) 439-6944.

Sincerely,

Tammy L. Samsel
Regional Director