STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

RAVENSWOOD TEACHERS ASSOCIATION, CTA/NEA, Charging Party, v. EDISON SCHOOLS, INC., Respondent.	Case No. SF-CE-2233-E PERB Decision No. 1661 July 15, 2004

Appearances: California Teachers Association by Ramon E. Romero, Attorney, for Ravenswood Teachers Association, CTA/NEA; Foley and Lardner by John H. Douglas, Attorney, for Edison Schools, Inc.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

NEIMA, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Ravenswood Teachers Association, CTA/NEA (RTA) of a Board agent's dismissal (attached) of its unfair practice charge. The charge alleged that the Edison Schools, Inc. violated the Educational Employment Relations Act (EERA)[1] by discriminating against three teachers at the Edison Brentwood Academy (Edison Brentwood), a charter school of the Ravenswood City Elementary School District (District). The allegations in this case are identical to those in unfair practice charge Case Nos. SF-CE-2218-E and SF-CE-2236-E, both also filed by RTA. The only difference is that Case No. SF-CE-2218-E names the District as the employer while Case No. SF-CE-2236-E names Edison Brentwood.

[1]EERA is codified at Government Code section 3540, et seq.

Recently, the Board issued Ravenswood City Elementary School District (2004) PERB Decision No. 1660 (Ravenswood) resolving the two other cases. In Ravenswood, the Board held that Edison Brentwood, and not the District, was the proper "public school employer" for purposes of EERA in those cases. As the Board has already found that Edison Brentwood is the proper employer, this charge must also be dismissed.

ORDER

The unfair practice charge in Case No. SF-CE-2233-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Duncan joined in this Decision.

Member Whitehead's concurrence begins on page 3.

WHITEHEAD, Member, concurring: Although I reach the same conclusion as the majority, I write separately to caution against adopting a general rule for interpreting Education Code section 47611.5(f).

In Long Beach Community College District (2003) PERB Decision No. 1564 the Public Employment Relations Board found at p. 10:

> [I]t is a fundamental rule of statutory construction that the intent of the Legislature should be examined in order to effectuate the purpose of the law. (Moyer [v. Workmen's Comp. Appeals Bd. (1973) 10 Cal. 3d 222, 230 [110 Cal. Rptr. 144] (Moyer)], at p. 230.) In determining intent, it is important to examine the language of the statute and to give effect to each word. (Moyer at p. 230.) However, it is also a fundamental rule of statutory construction that a statute must be construed in context, 'keeping in mind the nature and obvious purpose of the statute where they appear.' (Moyer at p. 230.) "[T]he various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole." (Moyer at p. 230.) [Emphasis added.]

Along these lines, I look to the pertinent provisions of the Migden amendment to the Charter Schools Act (Stats. 1999, Ch. 828) for guidance. Section 47611.5(f) of the Education Code provides:

> By March 31, 2000, all existing charter schools must declare whether or not they shall be deemed a public school employer in accordance with subdivision (b), and such declaration shall not be materially inconsistent with the charter. [Emphasis added.]

Education Code section 47611.5(b) requires that:

> A charter school charter shall contain a declaration regarding whether or not the charter school shall be deemed the exclusive public school employer of the employees at the charter school for the purposes of Section 3540.1 of the Government Code. If the charter school is not so deemed a public school employer, the school district where the charter is located shall be deemed the public school employer for the purposes of Chapter 10.7 (commencing with Section 3540) of Division 4 of the Government Code. [Emphasis added.]

Educational Employment Relations Act (EERA) section 3540.1(k) provides:

> 'Public school employer' or 'employer' means the governing board of a school district, a school district, a county board of education, a county superintendent of schools, <u>or a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code</u>. [Emphasis added.]

This legislation does not describe a process by which the charter school "declares" the identity of public school employer but does state for each existing charter school that the declaration must be "in accordance with subdivision (b)" and "not materially inconsistent with the charter."[1]

It is this Board's responsibility to determine the identity of the public school employer for purposes of compliance with EERA. With the recent proliferation of charter schools, this task has been made more complicated. How a charter school complies with the requirements discussed above may vary significantly from one charter school to the next. Given that each charter school has its own charter, it would be impossible to write a general rule that would govern all occasions. I believe that each case must be judged on its own merits to determine whether the "declaration" was made in a manner that satisfies the Legislature's requirements.

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[1]This obligation also appears to apply to charter schools that previously made a declaration and now wish to change it.

Dismissal Letter

December 18, 2001

Ramon E. Romero, Staff Attorney
California Teachers Association
P O Box 921
Burlingame, CA 94011-0921

Re: Ravenswood Teachers Association, CTA/NEA v. Edison Schools Inc.
Unfair Practice Charge No. SF-CE-2233-E
DISMISSAL LETTER

Dear Mr. Romero:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on October 14, 2001. The Ravenswood Teachers Association, CTA/NEA alleges that the Edison Schools Inc.(Edison) violated the Educational Employment Relations Act (EERA)[1] by discriminating against three teachers at Edison Brentwood Academy.

The same allegations raised in this charge were raised in unfair practice charge SF-CE-2218 which named the Ravenswood City School District (District) as the employer and in charge number SF-CE-2236 which named Edison Brentwood Academy (Academy), a charter school, as the employer.

I indicated to you in my attached letter dated December 7, 2001, 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 December 20, 2001, the charge would be dismissed.

On December 14, 2001, you filed a First Amended Charge in which you provide in Paragraph 18, a response to my inquiries as to the status of Edison Schools Inc. as either a "joint employer" with Edison Brentwood Academy or, as a "single employer" that would meet the definition of "public school employer" as expressed in EERA 3540.1(k).

In the amended charge you provide the following as reasons for finding Edison as joint or single employer with Edison Brentwood Academy:

[1] EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

(1) Both the Principal and Director of Brentwood Academy were employees of Edison and took their direction from Edison managers, thus common management;
(2) The operations of Edison Schools Inc. and Edison Brentwood Academy are interrelated in that Edison Brentwood Academy is but one of many similarly structured charter schools managed by Edison across California and the USA;
(3) Edison and Edison Brentwood Academy have common ownership of their business operations;
(4) Edison and Edison Brentwood Academy have common and/or centralized control of labor relations as partially evidenced by the fact that the same law firm represents both;
(5) Even without common ownership, Edison and Edison Brentwood Academy are joint employers because of Edison effectively and actively participates in the control of Edison Brentwood Academy.

For the reasons expressed in my December 7, 2001 letter, and because you have failed to provide any additional facts to support your theory of joint employer or single employer the charge is being dismissed. The legal conclusions you draw from the fact that Edison employed the Principal and the Director of Edison Brentwood Academy are insufficient to establish that it is the "public school employer" of the employees in question.

As you indicated in your amended charge, RTA learned for the first time on or about August 20, 2001, that pursuant to Education Code 47611.5, Edison Brentwood Academy had declared itself the public school employer for purposes of EERA. The fact that Edison Brentwood Academy subcontracted with Edison Schools Inc. for management services does not establish common ownership or common mission or common purpose between the two.

As I pointed out in my warning letter, PERB has held that a public school employer and a company providing transportation to students of that employer did not become a single employer for purposes of EERA. See United Public Employees v. Public Employment Relations Board (1989) 213 Cal. App. 3d 1119, 1128, 262 Cal Rptr.158. The charge fails to establish that Edison is a public school employer and therefore fails to establish that PERB has jurisdiction.

Right to Appeal

Pursuant to PERB Regulations,[2] 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. (Regulation 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.

[2] PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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. (Regulations 32135(a) and 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 Regulation 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. (Regulations 32135(b), (c) and (d); see also Regulations 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. (Regulation 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 Regulation 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. (Regulation 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. (Regulation 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,

ROBERT THOMPSON
General Counsel

By _____
Roger Smith
Labor Relations Specialist

Attachment

cc: Lynn Goodfellow

RCS

Warning Letter

December 7, 2001

Ramon E. Romero, Staff Attorney
California Teachers Association
P O Box 921
Burlingame, CA 94011-0921

Re: Ravenswood Teachers Association, CTA/NEA v. Edison Schools Inc.
Unfair Practice Charge No. SF-CE-2233-E
WARNING LETTER

Dear Mr. Romero:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on October 14, 2001. The Ravenswood Teachers Association, CTA/NEA alleges that the Edison Schools Inc.(Edison) violated the Educational Employment Relations Act (EERA)[1] by discriminating against three teachers at Edison Brentwood Academy.

The same allegations raised in this charge were raised in unfair practice charge SF-CE-2218 which named the Ravenswood City School District (District) as the employer and in charge number SF-CE-2236 which named Edison Brentwood Academy (Academy), a charter school, as the employer.

Through this charge you seek to have PERB find that Edison Schools Inc. is the employer of the three teachers or acts as a joint employer or alter-ego with the District/Academy. The only information you provided as to the nature of the joint employer status between Edison and the District/Academy is that at the time of the alleged violations, the Principal, Martha Navarette was employed as a supervisory employee of Edison, and that Edison continues to employ the Principal at the Academy and also provide other management services to the District and Academy.

EERA section 3540.1(k) defines a "public school employer" as:

> (k) "Public school employer" or "employer" means the governing board of a school district, a school district, a county board of education, a county superintendent of schools, or a charter school

[1] EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

> that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code.

Edison Schools Inc. is a private corporation and does not fall within this definition.

Because Edison does not meet the definition of "public school employer" in EERA, and you have not argued that the District/Academy and Edison have become a single employer, this case is being analyzed as if Edison were a joint-employer with the District/Academy. However, you have not provided any facts to support your argument that Edison acts as a joint employer with the District/Academy.

The National Labor Relations Board (NLRB) has defined a joint-employer in National Transportation Service, Inc. 240 NLRB 565, 100 LLRM 1263 (1979) as one in which one employer accedes control over terms and conditions of employment to another so that it fails to have sufficient ability to bargain with a labor organization. An employer that retains sufficient control over terms and conditions of employment can not claim joint-employer status simply because there is an "intimate connection" between the purposes of an exempt employer and the services provided by a nonexempt employer. Here, the Academy provides a public education to students of the District and Edison provides management services to the Academy. The District/Academy still appears to maintain control over the terms and conditions of employment, e.g. wages, hours of work and benefits. If you have facts to demonstrate the contrary, please provide them.

PERB has held that a school district and the company providing bus services to that district were not a single employer for purposes of EERA. See United Public Employees v. Public Employment Relations Board (1989) 213 Cal. App. 3d 1119, 1128, 262 Cal Rptr.158. The management services provided by Edison without further facts, similarly does not demonstrate that it a joint-employer falling under PERB's jurisdiction. You need to provide additional facts to support the allegation that Edison rather than the Academy/District exercises control over terms and conditions of employment. Without the additional information, the charge falls short in establishing that Edison acts as a joint-employer with the District/Academy.

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 that 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 of service must be filed with PERB. If I do not receive an

amended charge or withdrawal from you before December 20, 2001, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Roger Smith
Labor Relations Specialist