

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

JOHN ROSSMANN,

Charging Party,

v.

ORANGE UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. LA-CE-4753-E

PERB Decision No. 1670

July 28, 2004

Appearances: John Rossmann, on his own behalf; Parker & Covert by Spencer E. Covert, Attorney, for Orange Unified School District.

Before Duncan, Chairman; Whitehead and Neima Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on appeal by John Rossmann (Rossmann) of a Board agent's dismissal (attached) of his unfair practice charge. The charge alleged that the Orange Unified School District (District) violated the Educational Employment Relations Act (EERA) section 3543.5(c)¹ by providing an exclusive representative with inaccurate information regarding the financial resources of the District.

Section 3543.5(c) makes it a violation to bargain in bad faith. The exclusive representative is the correct party under this code section.²

¹EERA is codified at Government Code section 3540, et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Under Section 3543.5(c) it is unlawful for the employer to "[r]efuse or fail to meet and negotiate in good faith with an exclusive representative."

²As of January 1, 2004, section 3543.5(c) has been amended to include "Knowingly providing an exclusive representative with inaccurate information, whether or not in response

As the District points out, the exclusive representative for teachers and other certificated non-management personnel is the Orange Unified Education Association (Association).³

We find the warning and dismissal letters of the Board agent to be without prejudicial error and adopt them as the decision of the Board itself as discussed below.

DISCUSSION

Rossmann has not provided any information or facts to show he has any authority to speak for the exclusive representative. He therefore, does not have standing to bring these charges.

Individual employees do not have standing to allege unilateral change violations (Oxnard School District (Gorcey/Tripp) (1988) PERB Decision No. 667) nor allege violations of sections which protect the collective bargaining rights of employee organizations. (State of California (Department of Corrections) (1993) PERB Decision No. 972-S.)

Rossmann has appealed the Board agent's determination that there is a lack of standing based on his belief that any citizen has a right and a civic obligation to defend the law. The rule that individual employees do not have standing to assert violations of EERA section 3543.5(c) is based on the fact that this section prohibits an employer from bargaining in bad faith with an exclusive representative. The obligation to bargain does not extend to individual employees or "any citizen."

As Rossmann lacks standing it is unnecessary to reach the merits of the charges.

We therefore find that the Board agent's dismissal is affirmed.

to a request for information, regarding the financial resources of the public school employer constitutes a refusal or failure to meet and negotiate in good faith."

³The Association has been the exclusive representative since 1976, according to the District.

ORDER

The unfair practice charge in Case No. LA-CE-4753-E is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Members Whitehead and Neima joined in this Decision.

Dismissal Letter

June 8, 2004

John Rossman
14661 Berkshire Place
Tustin, CA 92780

Re: John Rossmann v. Orange Unified School District
Unfair Practice Charge No. LA-CE-4753-E
DISMISSAL LETTER – First Amended Charge

Dear Mr. Rossman:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on May 17, 2004. John Rossmann alleges that the Orange Unified School District violated Educational Employment Relations Act (EERA)¹ section 3543.5(c) by knowingly providing an exclusive representative with inaccurate information regarding the financial resources of the District.

I indicated to you in my attached letter dated May 18, 2004, 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 May 28, 2004, the charge would be dismissed.

On June 2, 2004 I received an amended charge. The amended charge asserts that “any and all citizens have the constitutional right – indeed, have the civic obligation to assert charges in defense of the law.” (emphasis in the original.) As such, the reasoning in the warning letter that denies standing to the charging party is wrong. Second, a prima facie case was stated by the evidence presented in the original charge because no contradictory evidence was presented.² Third, the documents show that Superintendent French knowingly presented false information. Fourth, the Superintendent’s April 2, 2004 letter was directed to Orange Unified Education Association Members which is the equivalent to providing it to the Association because the members of the Association include its officers.

The first assertion in the amended charge concerns the issue of standing. As discussed in the warning letter, PERB has determined that individual employees do not have standing to assert violations of EERA section 3543.5(c). This rule is based on the fact that this section prohibits

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.

² The District’s response to the original and amended charge was filed on June 4, 2004.

an employer from bargaining in bad faith with an exclusive representative. The obligation to bargain does not extend to employees. The same is true for the employer's obligation to provide accurate financial information to the exclusive representative.

Under Government Code section 3541.3:

The board shall have all of the following powers and duties:

.

(i) To investigate unfair practice charges or alleged violations of this chapter, and take any action and make any determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies of this chapter.

.

(n) To take any other action as the board deems necessary to discharge its powers and duties and otherwise to effectuate the purposes of this chapter.

Based on these provisions and Government Code section 3543.5(c), the Board has determined that employees do not have standing to pursue a violation of Government Code section 3543.5(c). (State of California (Department of Corrections) (1993) PERB Decision No. 972-S.) Accordingly this charge must be dismissed based on the facts and reasons contained in this letter and my May 18, 2004 letter.

As Mr. Rossmann lacks standing to pursue this charge, it is unnecessary to review the other allegations made in the amended charge.

Right to Appeal

Pursuant to PERB Regulations,³ 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.

A document is considered "filed" when actually received before the close of business (5 p.m.) on 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

³ PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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.)

LA-CE-4753-E
June 8, 2004
Page 4

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

Attachment

cc: Spencer Covert, Attorney

Warning Letter

May 18, 2004

John Rossmann
14661 Berkshire Place
Tustin, CA 92780

Re: John Rossmann v. Orange Unified School District
Unfair Practice Charge No. LA-CE-4753-E
WARNING LETTER

Dear Mr. Rossmann:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on May 17, 2004. John Rossmann alleges that the Orange Unified School District violated Educational Employment Relations Act (EERA)¹ section 3543.5(c) by knowingly providing an exclusive representative with inaccurate information regarding the financial resources of the District.

I attempted to telephone you at the number listed on the unfair practice charge but received no answer and was unable to leave a message. In January 2004, District Superintendent Robert French sent a letter to voters in the District indicating that District enrollment was continuing to rise. The March 11, 2004, District Board agenda stated that the District's enrollment would remain the same for the next year. The California Department of Education shows the District's enrollment to be different than the Superintendent's letter or the Board agenda. The charge also details other discrepancies regarding District revenues and health insurance premiums.

The information provided in the charge does not state a prima facie violation for the reasons that follow.

The charge alleges that the employer violated EERA section 3543.5(c) by knowingly providing an exclusive representative with inaccurate information regarding the financial resources of the District. Although the charge includes information that shows arguable discrepancies between information provided by District and other sources of information, that is not the end of the inquiry. The violation is not simply to be incorrect but rather to "knowingly provide an exclusive representative with inaccurate information,..." Nothing in the charge indicates that the information was provided to an exclusive representative. And there is no information demonstrating how the District knowingly provided inaccurate information. Without this information, there is no violation of this provision.

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.

Finally, even if the allegations in the charge were amended to demonstrate these elements, charging party does not have standing to file this type of charge. The section of the EERA that is the subject of this charge was amended into the act effective January 1, 2004. Accordingly, there are no Board decisions interpreting it. However, individual employees do not have standing to allege unilateral change violations (Oxnard School District (Gorcey/Tripp) (1988) PERB Decision No. 667.) nor to allege violations of sections which protect the collective bargaining rights of employee organizations. (State of California (Department of Corrections) (1993) PERB Decision No. 972-S.) The language in question is located in the section that makes it a violation to bargain in bad faith. Failure to provide necessary and relevant information was a violation of this section before the amendment.² Therefore it is reasonable to conclude that individual employees do not have standing to assert a violation of this section of 3543.5(c).

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 May 28, 2004, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Robert Thompson
General Counsel

² The exclusive representative is entitled to all information that is "necessary and relevant" to the discharge of its duty of representation. (Stockton Unified School District (1980) PERB Decision No. 143). Failure to provide such information is a per se violation of the duty to bargain in good faith.