

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



VICTORIA HEGGEM,

Charging Party,

v.

ARCADIA TEACHERS ASSOCIATION,

Respondent.

Case No. LA-CO-1208-E

PERB Decision No. 1833

April 10, 2006

Appearances: Smith & Myers by Thomas Myers, Attorney, for Victoria Heggem; California Teachers Association, by Michael Hersh, Attorney, for Arcadia Teachers Association.

Before Duncan, Chairman; McKeag and Neuwald, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (Board) on appeal by Victoria Heggem (Heggem) of a Board agent's dismissal (attached) of her unfair practice charge regarding the imposition of a \$60.00 temporary dues assessment for at least the next three years. Heggem alleges that the Arcadia Teachers Association (Association) requires her to make a charity-substitution payment in an amount equal to dues paid by voluntary members of the union, including this temporary dues assessment amount. Heggem further alleged that by this action the Association violated her rights under sections 3543.6(b), 3546(a) and 3546.3 of the Educational Employment Relations Act (EERA).¹

The Board has reviewed the entire record in this case including, but not limited to, the unfair practice charge, the Board agent's warning and dismissal letters, Heggem's appeal and

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

the Association's response. The Board finds the warning and dismissal letters to be without prejudicial error and adopts them as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. LA-CO-1208-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members McKeag and Neuwald joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1020
Fax: (510) 622-1027



October 27, 2005

Bruce N. Cameron, Attorney
National Right to Work Legal Defense Foundation, Inc.
8001 Braddock Road, Suite 600
Springfield, Virginia 22160

Re: Victoria Heggem v. Arcadia Teachers Association
Unfair Practice Charge No. LA-CO-1208-E
DISMISSAL LETTER

Dear Mr. Cameron:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on August 11, 2005. Victoria Heggem alleges that the Arcadia Teachers Association violated the Educational Employment Relations Act (EERA)¹ by requiring that she, as a religious objector, pay a sum equivalent to union dues to a charity.

I indicated to you in my attached letter dated September 29, 2005, 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 October 13, 2005, the charge would be dismissed.

During our telephone conversation on October 18, 2005, I agreed to accept the filing of two additional documents which you requested be made part of the record.² The first, dated October 15, 2005, is the *Hudson* notice from the California Teachers Association to agency fee payers. The letter informs agency fee payers regarding their rights and the temporary CTA dues increase of \$60 per year for up to three years. Regarding the temporary dues increase, the letter states:

The purpose of this temporary dues increase is to help CTA fight against certain initiative measures in the November 2005 special election. Since this money is targeted for political uses, CTA has decided not to apply its 2003-04 chargeable percentage to this amount but to rebate it to all objectors in the current year at

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 Respondent was served a copy of the documents and filed a reply on October 21, 2005.

100%. Accordingly, the 65.5% chargeable percentage will be applied to CTA's "base" dues amount (i.e. minus the \$60) and 0% chargeable will be applied to the \$60.

The second document, dated October 11, 2005, is a letter from a CTA attorney to a NRWLDF attorney informing him of CTA's decision that it will provide advance rebate of the \$60 special dues assessment to agency fee payers who request a rebate.

Both documents, however, do not provide any additional information as to why religious objectors should be granted agency fee payer and objectors' rights as provided by the EERA or treated as such. As provided by Government Code section 3546.3, religious objectors are not required to join, maintain membership in, or financially support any employee organization as a condition of employment. Instead, they are required to pay sums equal to a *service fee* to a charitable fund. Here, the fee assessed service fee payers before the rebate was increased by \$60 per year. Thus, Heggem's charitable donation could also be increased by that same amount since the statute does not provide a mechanism whereby religious objectors may elect to pay a reduced fee. Therefore, I am dismissing the charge based on the facts and reasons contained in my September 29, 2005 letter.

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 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

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

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 _____
Anita I. Martinez
Regional Director

Attachment

cc: Michael D. Hersch

PUBLIC EMPLOYMENT RELATIONS BOARD



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1330 Broadway, Suite 1532
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September 29, 2005

Bruce N. Cameron, Attorney
National Right to Work Legal Defense Foundation, Inc.
8001 Braddock Road, Suite 600
Springfield, Virginia 22160

Re: Victoria Heggem v. Arcadia Teachers Association
Unfair Practice Charge No. LA-CO-1208-E
WARNING LETTER

Dear Mr. Cameron:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on August 11, 2005. Victoria Heggem alleges that the Arcadia Teachers Association violated the Educational Employment Relations Act (EERA)¹ by requiring that she, as a religious objector, pay a sum equivalent to union dues to a charity.

My investigation revealed the following. Victoria Heggem has taught in the Arcadia School District for approximately fifteen years. Certificated employees are exclusively represented by the Arcadia Teachers Association, CTA/NEA. In 2001, the Association informed Heggem that she was required to join the Association or pay a service fee. As a member of the Lake Avenue Congregational Church, Heggem informed the Association that she has sincere religious objections to joining or financially supporting the Association.

Federal court litigation ensued which ended in 2003. As a result, Heggem pays a sum equivalent to union dues to Children's Hospital of Los Angeles, one of the charities listed in the parties' collective bargaining agreement. Her payments continue to date.

In March 2005, CTA leaders proposed to its elected teacher-delegates of the CTA State Council of Education that a vote be conducted at the June State Council of Education meeting to temporarily increase dues for up to three years. The delegates were asked to meet with their local constituents prior to the vote. At the June 11, 2005 State Council meeting, opponents of the dues increase distributed leaflets and lobbied the delegates. The delegates voted nearly unanimously to approve the temporary \$60 dues increase. The increase will be required as part of the dues paid by CTA members and may be used to counter propositions scheduled for the November 2005 election.

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.

On July 5, 2005, the secretary for the Association confirmed to Heggem that she would have to pay the \$60 increase for at least three years. Heggem maintains that she is being discriminated against because instead of paying an amount equal to service fee payers, she is required to pay an amount equal to the dues paid by voluntary members of the union, including the June 11, 2005 temporary dues assessment and expenses used for political purposes.

Government Code section 3546.3 provides:

Notwithstanding subdivision (i) of Section 3540.1, Section 3546, or any other provision of this chapter, any employee who is a member of a religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations shall not be required to join, maintain membership in, or financially support any employee organization as a condition of employment; except that such employee may be required, in lieu of a service fee, to pay sums equal to such service fee either to a nonreligious, nonlabor organization, charitable fund exempt from taxation under section 501(c)(3) of title 26 of the Internal Revenue Code, chosen by such employee from a list of at least three such funds, designated in the organizational security arrangement, or if the arrangement fails to designate such funds, then to any such fund chosen by the employee. Either the employee organization or the public school employer may require that proof of such payments be made on an annual basis to the public school employer as a condition of continued exemption from the requirement of financial support to the recognized employee organization. If such employee who holds conscientious objections pursuant to this section requests the employee organization to use the grievance procedure or arbitration procedure on the employee's behalf, the employee organization is authorized to charge the employee for the reasonable cost of using such procedure.

Government Code section 3546 also provides in part:

(a) .. Thereafter, the employee shall, as a condition of continued employment, be required either to join the recognized employee organization or pay the fair share service fee. The amount of the fee shall not exceed the dues that are payable by members of the employee organization, and shall cover the cost of negotiation, contract administration, and other activities of the employee organization that are germane to its functions as the exclusive bargaining representative. Agency fee payers shall have the

right, pursuant to regulations adopted by the Public Employment Relations Board, to receive a rebate or fee reduction upon request, of that portion of their fee that is not devoted to the cost of negotiations, contract administration, and other activities of the employee organization that are germane to its function as the exclusive bargaining representative.

(b) The costs covered by the fee under this section may include, but shall not necessarily be limited to, the cost of lobbying activities designed to foster collective bargaining negotiations and contract administration, or to secure for the represented employees advantages in wages, hours, and other conditions of employment in addition to those secured through meeting and negotiating with the employer...

PERB has implemented regulations regarding agency fee. In part, they provide the following:

32991. Amount of Agency Fee.

The agency fee shall not exceed the amounts set forth in Government Code Sections 3502.5(a), 3513(k), 3540.1(i)(2), 3546, 3583.5, 71632.5 and 71814, or Public Utilities Code Section 99566.1.

32992. Notification of Nonmember.

(a) Each nonmember who will be required to pay an agency fee shall annually receive written notice from the exclusive representative of:

- (1) The amount of the agency fee which is to be expressed as a percentage of the annual dues per member based upon the chargeable expenditures identified in the notice;
- (2) The basis for the calculation of the agency fee; and
- (3) A procedure for appealing all or any part of the agency fee...

In addition, PERB regulation 32994 governs the agency fee appeal procedures available to agency fee objectors.

As provided for in the statute, the Association and the District have designated three charitable entities as beneficiaries when employees are members of a religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations. Since Heggem qualifies as a *religious* objector, she is not required to join,

maintain membership in, or financially support the Association as a condition of employment, and is entitled to choose one of the charities to which she forwards her monies.

Religious objectors and agency fee payers/objectors are not similarly situated classes. Religious objectors contribute all of their monies to charities; unions receive no benefit from their contributions. Agency fee payers remit fees to the exclusive representative equivalent to the amount that members pay, which is reduced *only* if they become agency fee objectors on a yearly basis. Pursuant to the statute and regulations, nonmember agency fee payers are entitled to an annual *Hudson* notice which initiates objection timelines and procedures. There is no statutory requirement that religious objectors be given an annual notice or that they are entitled to a reduced agency fee. They are however required to pay a sum equivalent to agency fees, which Heggem does. In a recent case *Madsen v. Associated Chino Teachers* (CD. Cal.2004) 317 F.Supp.2nd 1175, it was found that EERA does not violate Title VII, Establishment Clause or Equal Protection Clause by disallowing religious objectors the right to make charitable contributions equal to service fees paid by agency fee objectors.

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 **October 13, 2005, I** shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Anita I. Martinez
Regional Director

AIM