

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



THE REGENTS OF THE UNIVERSITY)	
OF CALIFORNIA,)	
)	
Employer,)	Case No. SF-HS-1
Appellant,)	
)	PERB Order No. Ad-107a-H
and)	
)	ADMINISTRATIVE APPEAL
UNIVERSITY OF CALIFORNIA STUDENT)	
BODY PRESIDENTS' COUNCIL,)	July 21, 1981
)	
Student Representative,)	
Appellee.)	
)	

Appearances: Claudia Cate, Attorney for the Regents of the University of California; J. Allan Dailey for the University of California Student Body Presidents' Council.

Before Gluck, Chairperson; Jaeger and Moore, Members.

DECISION AND SUPPLEMENTAL ORDER

The Regents of the University of California (hereafter University or Regents) have filed an appeal with the Public Employment Relations Board (hereafter PERB or Board) seeking reversal of the regional director's determination that a charge alleging a violation of section 3597(a) of the Higher Education Employer-Employee Relations Act (hereafter HEERA)¹ be entertained. In a letter to the regional director dated February 4, 1981, the University of California Student Body

¹Government Code section 3560 et seq. All statutory references are to the California Government Code unless otherwise specified.

Presidents' Council (hereafter Council) indicated that the University had denied the Council its asserted right to participate in the meeting and conferring sessions between the Statewide University Police Association (hereafter SUPA) and the University. The Council relies on section 3597(a) of HEERA which provides:

Subject to provisions of subdivision (d), in all meeting and conferring between higher education employers and employee organizations representing student service or academic personnel, a student representative shall have the right to be notified in writing by the employer and the employee organizations of the issues under discussion. A student representative shall have the right to be present and comment at reasonable times during meeting and conferring between the employer and such employee organizations.

The Council formally requested that PERB "take jurisdiction in this matter to provide whatever remedial action it deems appropriate." Thereafter, the regional director notified the Council, the University and SUPA to submit briefs on the issue of PERB's jurisdiction and the process which should be utilized should jurisdiction be asserted. Briefs were submitted by the Council and the University. SUPA did not submit a brief.

The regional director considered the arguments urged by the parties in their briefs and, on March 12, 1981, issued his decision concluding that "PERB has clear and explicit authority to deal with alleged violations of section 3597" and ordered that a hearing be conducted.

Thereafter on March 23, 1981, the University submitted the instant appeal of the regional director's determination. On April 23, 1981, the Board ordered that the hearing scheduled in the instant case be stayed pending issuance of this decision.²

In accordance with the discussion below, we find that the Board has authority to entertain the Council's alleged violation of section 3597(a). The Board affirms the regional director's decision and orders that the parties proceed to hearing.

In seeking reversal of the regional director's decision, the Regents argue in their brief that the Board's authority under section 3563(h) does not contain a grant of authority to hold hearings and therefore, the Board cannot hold a hearing in the instant case. Section 3563(h) provides PERB with the authority to ". . . investigate unfair practice charges or alleged violations of this chapter, and to take such action and make such determinations in respect of such charges or alleged violations as the board deems necessary to effectuate the policies of this chapter." [Emphasis supplied.] In our view, this provision plainly empowers the Board to investigate the violation of HEERA asserted by the Council and to make a determination with respect to that allegation. Utilization of

²The Regents of the University of California (4/23/81)
PERB Order No. Ad-107.

the Board's administrative hearing procedure is likewise authorized in the instant case by reference to section 3563(g) of HEERA which invests the Board with the authority to hold hearings, subpoena witnesses, administer oaths, and take the testimony or deposition of any person. Thus, in light of this statutory power and in conformity with PERB rules 32165 through 32230³ which set forth the agency's hearing processes and procedures, the Board finds that where a violation of section 3597 has been alleged, assertion of the Board's jurisdiction is warranted.

The Regents dispute this basis for PERB's jurisdiction and argue that the Board's "general" authorization to hold hearings under section 3563(g) cannot be used as it would violate a general rule of administrative law that an administrative agency cannot alter or enlarge its statutory mandate, citing Addison v. Department of Motor Vehicles.⁴ We find that the Regents' reliance on Addison is misplaced. Unlike the case at hand, Addison dealt with an administrative agency's enactment of regulations which the court held exceeded the agency's statutory authority. In this case, however, the Board has enacted no rules or regulations specifically designed to accommodate the type of alleged violations of HEERA as raised

³PERB rules and regulations are codified at California Administrative Code, title 8, section 31000 et seq.

⁴(1977) 69 Cal.App.3d 486.

by the Council. Indeed, the Board is confident that, consistent with the statutory mandate as expressed in subsections 3563(g) and (h), its authority to take appropriate action, including the conducting of hearings, is not dependent on the Board's adoption of rules or regulations specific to alleged violations of section 3597. The hearing ordered in the instant case may proceed in conformity with PERB's general hearing processes and procedures.

The Regents also argue that it would be inconsistent with the purposes of the HEERA to assert jurisdiction in this case. While the Regents correctly point out that section 3560(e) is concerned with "relations between each higher education employer and its employees" and students are neither employers nor employees, we note that one of the purposes found in section 3561(a) provides in part that "[i]t is the further purpose of this chapter to provide orderly and clearly defined procedures for meeting and conferring . . ." [emphasis supplied]. The Legislature in section 3597 has clearly defined the procedures to be followed for student participation in the meeting and conferring process, and it follows that, contra to the Regents' position, the purposes of the HEERA will be fulfilled by PERB's assertion of jurisdiction in cases alleging a violation of section 3597.

The Regents have also argued that even if the Board has jurisdiction to hear the case it would be a futile act as the

Board has no authority to order a remedy. They conclude that the lack of a specific statutory penalty in section 3597(a) is fatal to the Board's ability to fashion a remedy. We point out first that the Regents reliance on People v. Harter Packing Co.⁵ is misplaced. The Harter Packing Co. case dealt with an attempt by the director of agriculture to impose greater sanctions than those specifically stated in the statute. That situation is not relevant to the instant case. The Board's authority to fashion a remedy appropriate to the situation comes from subsections (h) and (m) of section 3563 which allow the Board to take actions necessary to effectuate the purposes of the Act and is not dependent on specifically authorized statutory penalties.

ORDER

Based on the foregoing, the appeal by the Regents of the University of California of the regional director's decision is DENIED. The Board's Order in The Regents of the University of California (4/23/81) PERB Order No. Ad-107, which stayed the hearing in this case, is hereby vacated and the regional

⁵ (1958) 160 Cal.App.2d. 464.

director is ordered to set a hearing in the above-captioned case

By: Barbara D. Moore, Member

Harry Gluck, Chairperson

John W. Jaeger, Member J