STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

LOS ANGELES LABOR GROUP, Charging Party, v. LOS ANGELES UNIFIED SCHOOL DISTRICT, Respondent.	Case No. LA-CE-6417-E PERB Order No. Ad-478 April 16, 2020

Appearances: Gerald Corn, for Los Angeles Labor Group; Adam Grable, Assistant General Counsel, for Los Angeles Unified School District.

Before Banks, Shiners, and Paulson, Members.

DECISION

BANKS, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Los Angeles Labor Group (LALG) from an Administrative Law Judge's (ALJ) order dismissing a complaint and unfair practice charge against the Los Angeles Unified School District (LAUSD). The complaint and underlying charge alleged that LAUSD retaliated against one of its teachers, Gerald Corn (Corn), by issuing him a "below standard" evaluation because he exercised rights guaranteed by the Educational Employment Relations Act (EERA).[1] Additionally, the complaint and charge alleged that LALG was an employee organization under EERA section 3540.1, subdivision (d). After issuing an Order to

[1] EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references are to the Government Code.

Show Cause (OSC) and receiving responses from the parties, the ALJ concluded that LALG lacked standing to file the charge because it was not the exclusive representative of LAUSD teachers, who are exclusively represented by United Teachers Los Angeles (UTLA). On this basis, the ALJ dismissed the case.

Based on our review of the entire case file and applicable precedent in light of the parties' positions, we reverse the dismissal order and remand this case to the Division of Administrative Law for a hearing on the merits of the complaint.

PROCEDURAL HISTORY

LALG filed the underlying charge on November 7, 2018, alleging that LAUSD retaliated against Corn by issuing him a "below standard" evaluation because he reported to administrators that one of his students was behaving in a dangerous manner and subsequently complained that the administration had not adequately addressed the student's behavior. Section 1 of the charge form identified LALG as an "employee organization."[2] Although he was not named as a separate charging party, Corn identified himself as the person responsible for filing the charge. Corn also signed the required declaration stating that he had read the charge and that the information contained therein was true and complete to the best of his knowledge.

On November 20, 2018, PERB sent correspondence to the parties identifying LALG as the charging party and notifying LAUSD of its right to file a response. Corn was not identified as a party to the charge in this correspondence.

[2] Section 1 of PERB's unfair practice charge form requires the charging party to identify whether it is an employee, an employee organization, an employer, or a member of the public.

On December 21, 2018, LAUSD filed a position statement in response to the charge.

On February 26, 2019,[3] PERB's Office of the General Counsel issued a complaint alleging that the District violated EERA section 3543.5, subdivision (a), and identifying the charging party in the caption as "Gerald Corn (Los Angeles Labor Group)." On March 15, the District answered the complaint, denying all material allegations and asserting various affirmative defenses, including that LALG lacked standing.

On her own motion, the ALJ issued an OSC on April 30, directing LALG to present evidence that it was an "employee organization" as defined in EERA section 3540.1, subdivision (d), and that it had standing to pursue the unfair practice charge. LALG responded to the OSC on May 8, arguing that the allegations of the complaint established it was an employee organization and that PERB law allows a nonexclusive representative to prosecute discrimination charges on behalf of employees it represents.

On May 30, the ALJ issued an order of dismissal, concluding that while there were sufficient factual allegations to establish LALG's status as an employee organization, it had no standing to pursue the charge. Specifically, the ALJ concluded that LALG had no representational rights because LAUSD had recognized UTLA as the exclusive representative for certificated employees like Corn. Relying on *Hanford Joint Union High School District Board of Trustees* (1978) PERB Decision No. 58, (*Hanford*), the ALJ concluded that a nonexclusive representative like LALG has no

[3] All further dates occur in 2019.

standing to file an unfair practice charge over the wages, hours, or other terms and conditions of employment of an employee within the exclusively represented unit. On this basis, the complaint and charge were dismissed.

DISCUSSION

When the Board decides an appeal of a dismissal, it applies a de novo standard of review and is free to reach different legal determinations than those in the dismissal. (*County of Monterey* (2018) PERB Decision No. 2579-M, p. 7; *Beverly Hills Unified School District* (2008) PERB Decision No. 1969, pp. 7-8.) In dismissing the complaint and underlying charge, the ALJ concluded LALG had no standing to pursue a charge on behalf of Corn because he was a member of a bargaining unit with an exclusive representative, i.e. UTLA, and therefore allowing LALG to pursue the charge would violate the exclusivity principle embodied in EERA section 3543.1, subdivision (a).[4] We disagree with the ALJ's legal analysis and conclusion.

We recently explained the relevant legal principles governing the analysis of a charging party's standing to file and prosecute unfair practice charges. In *Regents of the University of California* (2020) PERB Decision No. 2699-H, we observed that a person or entity's standing depends on the legal claim at issue in the charge. (*Id.* at pp. 4-5.) "For example, because the statutory duty to meet and confer in good faith is owed only between exclusive representatives and employers, PERB has held that

[4] EERA section 3543.1, subdivision (a) provides, in pertinent part: "Employee organizations shall have the right to represent their members in their employment relations with public school employers, except that once an employee organization is recognized or certified as the exclusive representative of an appropriate unit pursuant to Section 3544.1 or 3544.7, respectively, only that employee organization may represent that unit in their employment relations with the public school employer."

individual employees lack standing to allege an employer failed to bargain in good faith." (*Id*. at p. 5, internal citations omitted.) Indeed, in its conclusion that a nonexclusive representative lacked standing to allege a unilateral change after the employer recognized an exclusive representative, *Hanford* was one of the earliest expressions of this rule. (*Hanford*, *supra*, PERB Decision No. 58.)

In *Oxnard School District (Gorcey & Tripp)* (1988) PERB Decision No. 667, the Board affirmed that the presence of an exclusive representative precludes individual employees and nonexclusive employee organizations from filing a charge alleging bad faith bargaining by the employer. (*Id.* at pp. 9, 11-12.) But the Board also noted that the exclusivity principle does not "limit the ability of employees to pursue unfair practice charges which assert individual rights under the Act." (*Id.* at p. 12.)

Similarly, we have never interpreted our statutes or regulations to mean that a nonexclusive representative lacks standing to pursue an unfair practice charge alleging a violation of EERA section 3543.5, subdivision (a), which makes it unlawful for a public school employer to "[i]mpose 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." (See *Regents of the University of California*, *supra*, PERB Decision No. 2699-H, p. 8 [holding "that a nonexclusive representative has standing to allege violations of the rights of employees it represents"].) This is because a public employer's duty to refrain from the conduct prohibited by section 3543.5, subdivision (a) is not dependent on the existence of an exclusive representative. Nor does such a charge interfere with the rights of an exclusive

representative to bargain on behalf of the unit. (Cf. *Hanford*, *supra*, at p. 7 [standing to allege unilateral change restricted to exclusive representative in order to prevent rivalry and the undermining of exclusive representative's power to bargain].) Thus, the presence of an exclusive representative does not divest employees or their nonexclusive representative of the right to file charges alleging violations of employees' individual statutory rights.

The ALJ misinterpreted *Hanford* when she concluded that no employee organization other than the exclusive representative has standing to pursue this charge alleging that LAUSD discriminated against Corn because he exercised rights guaranteed by EERA. The rights at issue are individual rights that aggrieved parties may assert without regard to the existence of an exclusive representative. We therefore reverse the dismissal and remand this matter for a hearing.

ORDER

The Board REVERSES the order of dismissal in Case No. LA-CE-6417-E and REMANDS the case to the Division of Administrative Law for a hearing on the complaint.

Members Shiners and Paulson joined in this Decision.