

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



BARBARA C. ABBOT,)
)
 Charging Party,) Case No. SF-CO-305
)
 v.) PERB Decision No. 665
)
 CALIFORNIA TEACHERS ASSOCIATION,) May 20, 1988
)
 Respondent.)
 _____)

Appearances: David T. Bryant, National Right to Work Legal Defense Foundation, Inc., for Barbara C. Abbot; Diane Ross, Attorney, for California Teachers Association.

Before Porter, Craib and Shank, Members.

DECISION

SHANK, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Barbara C. Abbot (Charging Party), of the general counsel's dismissal of her charge alleging that the California Teachers Association (CTA) violated her First and Fourteenth Amendment rights, citing Chicago Teachers' Union v. Hudson (1986) 106 S.Ct. 1066 [121 LRRM 2793], by using unconstitutional procedures in the deduction of agency fees from Charging Party's salary. Charging Party's appeal of the dismissal is based upon the assertion that the San Ramon Valley Educators' Association (the exclusive representative) and the California Teachers Association, collectively, constitute the "Union": CTA is the entity which dictates the procedure pursuant to which fees are

taken and used; the San Ramon Valley Unified School District transfers fees directly to CTA; and complete relief cannot be obtained unless CTA is made a party to this proceeding. The regional attorney in the attached Refusal to Issue Complaint and Dismissal of Unfair Practice Charge dismissed the charge because the exclusive representative, not the affiliate, is the proper respondent¹ and the charge as written fails to state a prima facie violation of the Educational Employment Relations Act (EERA).

We concur in the regional attorney's analysis. In King City High School District Association, et al. (1982) PERB Decision No. 197, the Board ruled that the proper respondent for an agency fee challenge is the exclusive representative. The Board reiterated this principle in Police Officers Research Association of California and California Association of Food and Drug Officials (1987) PERB Decision No. 644-S, dismissing the charges against the affiliate organizations and holding that the exclusive representative is the proper respondent in an agency fee challenge. Affiliation with the exclusive representative is insufficient to make the statewide organization the exclusive representative and, "[h]ence, it was not liable for a violation of EERA." Fresno Unified School

¹On February 23, 1987 the general counsel issued a complaint on an unfair practice charge filed by Charging Party against the exclusive representative containing charges substantially similar to the charges against CTA. San Ramon Valley Educators Association, SF-CO-304.

District (1982) PERB Decision No. 208; Washington Unified School District (1985) PERB Decision No. 549. Therefore, we dismiss this case for failure to state a prima facie violation of EERA.

ORDER

The unfair practice charge in Case No. SF-CO-305 is hereby DISMISSED.

Members Porter and Craib joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
177 Post Street, Suite 900
San Francisco, California 94108
(415)557-1350



March 19, 1987

Barbara C. Abbot

Diane Ross
California Teachers Assn.
1705 Murchison Drive
P. O. Box 921
Burlingame, CA 94011-0921

Re: REFUSAL TO ISSUE COMPLAINT AND DISMISSAL OF UNFAIR PRACTICE CHARGE
Barbara C. Abbot v. California Teachers Association, Charge No. SF-CO-305

Dear Parties:

Pursuant to Public Employment Relations Board (PERB) Regulation section 32730, a complaint will not be issued in the above-referenced case and the pending charge is hereby dismissed because it fails to allege facts sufficient to state a prima facie violation of the Educational Employment Relations Act (EERA). The reasoning which underlies this decision follows.

On January 19, 1987 Barbara C. Abbot filed an unfair practice charge against the California Teachers Association (CTA) alleging facts which purport to set forth a violation of EERA section 3543.5(a). More specifically, charging party alleges the following:

1. A portion of Ms. Abbot's monthly pay has been seized unlawfully from her by the District. She is an objecting agency fee payer and therefore she should have to pay no more than 85 percent of membership dues. 15 percent are, by CTA's admission, chargeable to political and ideological activities and therefore objectionable to Ms. Abbot; Yet the District deducts 100 percent of the membership dues from Ms. Abbot's paycheck. Despite her objection, the District continues to facilitate the full deduction of CIA dues from her monthly paycheck. The District is forcing her to extend an "involuntary loan" to CTA.
2. The method by which CTA determines that 15 percent of the monthly membership dues is attributable to political and ideological expenses is objectionable. The audit (dated December 12, 1986), while claiming to

¹References to the EERA are to Government Code sections 3540 et seq. PERB Regulations are codified at California Administrative Code, Title 8.

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have been undertaken in accordance with generally accepted accounting standards, does not indicate that it complied with the Hudson decision. The itemization contained in the audit lacks the specificity required by Hudson.

3. CTA has failed to provide a reasonably prompt opportunity for Ms. Abbot to challenge the amount of the deduction. CTA did not initiate a procedure in a prompt manner. Over nine months transpired between the effective date of Hudson and the arbitration hearing commenced in January 1987. the American Arbitration Association (AAA) is not an impartial decision-maker. It was selected by CTA unilaterally. Agency fee objectors were not part of the selection process. Numerous labor leaders sit on the National Board of the AAA. The AAA hearing does not present a reasonable opportunity to object to the agency fee amount. The hearing is conducted at the headquarters of the statewide CTA in Burlingame, California, during school hours over a period of six days, and was set at a time and date that could not be changed by any of the objectors. Charging party has no reliable way to verify whether the arbitrator selected by AAA is competent and impartial. CTA unilaterally selected the arbitrator from a list created by AAA,.
4. CTA did not provide escrow for amounts reasonably in dispute during the period that the deduction was being challenged. The escrow account, if it exists, is solely controlled by CTA and therefore not in compliance with Hudson. Charging party's requests for information about the escrow account have come to naught. She has not been told the names, location or identity of those responsible for the account.

On February 23, 1987 the regional attorney wrote to charging party informing her of the defects contained in the original unfair practice charge and warning her that unless withdrawn or amended, the allegations would be dismissed on March 2, 1987. Subsequently charging party requested and was granted an extension until March 10, 1987. On March 10, 1987 charging party filed a first amended unfair practice charge with PERB in this matter.

Charging party takes issue in the first amended unfair practice charge with a statement contained in the February 23, 1987 warning letter. She disputes the assertion that,

SRVEA pays CTA a portion of its dues in return for services.

Charging party does not dispute that there is an exchange between SRVEA and CTA in which CTA is paid for services rendered to the local entity. Further, charging party claims that the entire paycheck goes directly to CTA, and then

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local dues are sent back to SRVEA. this, in her view, establishes that SRVEA. has "no independent financial existence." Charging party's theory is that,

CTA directs all actions of the local and controls it completely.

Consequently, in her view, CTA is liable as a "principal."

For the reasons set forth in the warning letter of February 23, 1987, attached and incorporated by reference, the allegations of the original unfair practice charge and the first amended unfair practice charge fail to set forth a prima facie violation of EERA, sections 3543.6 (b) and 3544.9. The allegations and argument contained in the first amended unfair practice charge do not cure the defects of the original charge. Accordingly, the allegations are dismissed and no complaint will issue thereon.

Pursuant to Public Employment Relations Board regulation section 32635 (California Administrative Code, title 8, part III), you may appeal the refusal to issue a complaint (dismissal) to the Board itself.

Right to Appeal

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 Notice (section 32635(a)). To be timely filed, the original and five (5) copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) or sent by telegraph or certified or Express United States mail postmarked not later than the last date set for filing. Code of Civil Procedure section 1013 shall apply. The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

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 (5) copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal (section 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 section 32140 for the required contents and a sample form). The document will

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be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

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 (section 32132).

Final Date

If no appeal is filed within the specific time limits, the dismissal will become final when the time limits have expired.

Very truly yours,

JEFFREY SLOAN
General Counsel

By PETER HABEEFELD
Regional Attorney

cc: General Counsel

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
 177 Post Street, Suite 900
 San Francisco, California 94109
 (415) 557-1350



February 23, 1987

Barbara C. Abbot

Barbara C. Abbot v. California Teachers Association Charge No SF-CO-305

Dear Ms. Abbot:

ON January 19, 1987 Barbara C Abbot filed an unfair practice charge against the California Teachers Association (CTA) alleging facts which purport to set forth a violation of EERA section 3543.5(a). More specifically, charging party alleges the following:

1. A portion of Ms. Abbot's monthly pay has been seized unlawfully from her by the District. She is an objecting agency fee payer and therefore she should have to pay no more than 85 percent of membership dues. 15 per cent are, by CTA's admission, chargeable to political and ideological activities and therefore objectionable to Ms. Abbot. Yet the District deducts 100 percent of membership dues from Ms. Abbot's paychecks. Despite objection, the District continues to facilitate the full deduction, of dues from her monthly paycheck. The District is forcing her to extend "involuntary loan" to CIA.
2. The method by which CIA determines that 15 percent of the membership dues is attributable to political and ideological expense is objectionable. The audit (dated December 12, 1986), while claiming to have been undertaken in accordance with generally accepted accounting standards, does not indicate that it complied with the Hudson decision. The itemization contained in the audit lacks the specificity required by Hudson.
3. CIA ~~has~~ failed to provide a reasonably prompt opportunity for Ms. Abbott to challenge the amount of the deduction. CIA did not initiate a procedure in a prompt manner. Over nine months transpired between the effective date of Hudson and the arbitration hearing commenced in January 1987. The American Arbitration Association (AAA) is not an impartial decision-maker. It was selected by CIA unilaterally. Agency fee objectors were not part of the selection process. Numerous labor leaders sit on the National Board of the AAA. The AAA hearing does not present a reasonable opportunity to object to the agency fee amount. The hearing is conducted at the headquarters of the statewide CTA in Burlingame, California, during school hours over a period of six days, and was set at a time and date that could not be changed by any of the objectors. Charging party has no reliable way to verify whether the arbitrator selected by AAA is competent and impartial. CIA unilaterally selected the arbitrator from a list created by AAA.

4. CTA did not provide escrow for amounts reasonably in dispute during the period that the deduction was being challenged. The escrow account, if it exists, is solely controlled by CTA and therefore not in compliance with Hudson Charging party's requests for information about the ~~escrow~~ ~~account~~ account have come to naught. She has not been told the names, location or identity of those responsible for the account.

Investigation of the charge revealed the following. The collective bargaining ~~agreement~~ agreement between the District and the San Ramon Valley Education Association in Article 10, Organizational Security, provided for an election to be held in ~~accordance~~ with rules and regulations of the Public Employment Relations Board (PERB) to determine the issue of agency shop. Such an election was held and the members of the negotiating unit approved agency shop. As a result, members of the negotiating unit who are members of SRVEA/CTA/NEA are required to have dues deducted for the duration of the agreement. Any member of the ~~negotiating~~ unit who is not a member of the Association must authorize payroll ~~deduction~~ or make a payment to the Association of a service fee equivalent to unified membership dues, initiation fees, and general assessments. If such individual does not authorize payroll deduction of the service fee or make payment directly to the Association, the District, upon written request from the Association, shall begin payroll deduction of the service fee. Such a written request from the Association must include verification from the Association that it has, in writing, informed the Association non-member of his/her options regarding the religious objection and the method of payment of the service fee.

PERB records show that the CTA is an organization with which the San ~~Ramon~~ Valley Educators Association (SRVEA) is affiliated, and only SRVEA is the exclusive representative of District certificated employees. SRVEA pays CTA a portion of its dues in return for services.

In Link v. Antioch Unified School District, et al. (1985) PERB Order No. IR-47, the Board examined the exclusive representative's demand and return system and determined that the procedural protections made available to objecting fee-payers were sufficient to meet EERA standards, even though they did not require that the entire amount of the agency fee be escrowed pending the exclusive representative's determination and reimbursement of the amount attributable to political/ideological expenses.¹ Subsequent to PERB's

¹There, as here, the exclusive representative was affiliated with statewide CTA. Many aspects of the demand-and-return system were provided by statewide CTA to the local chapter and to CTA chapters throughout the state. The escrow account, for example, was administered at the state level and contained a sum intended to protect all objectors in the state.

decision in Link, the U.S. Supreme Court issued its decision in Chicago Teachers Union v Hudson (1986) 106 S. Ct 1066 [121 LRRM 2793]. Hudson held that the exclusive representatives constitutionally required to provide an adequate explanation of the basis for the fee, a reasonably prompt opportunity to challenge the amount of the fee before an impartial decision-maker, and an escrow for the amounts reasonably in dispute while such challenges are pending.

In Fresno Unified School District (1982) PERB Decision No. 208, Washington Unified School District (1985) PERB Decision No. 549, PERB held that mere affiliation by the exclusive representative with the statewide organization (such as CTA) is insufficient to make the statewide organization the exclusive representative and "hence, it was not liable for a violation of EERA." Also see Link v. California Teachers Association and National Education Association (1981) PERB Order No. Ad-123.

The charge, as written, fails to state a prima facie violation of EERA. Only the exclusive representative is required to provide the procedural protections discussed above. CIA is not the exclusive representative, and therefore is not obliged to provide the Hudson-type procedural requirements. Having no such obligation under EERA, CIA is not an appropriate party to this action.

If you feel that there are any factual inaccuracies in this letter or any additional facts which would correct the deficiencies explained above* please amend the charge accordingly. (1) The amended charge should be prepared on standard PERB Charge, (2) contain all the facts and allegations you wish to make, (3) indicate the case number where indicated on the form (even though you are not to write in the box when originally filing a charge), (4) and be signed under penalty of perjury by the charging party (forms enclosed), The amended charge must be served on the respondent, and proof of service must be attached to the original as well as to all copies of the amended charge (forms enclosed).

If I do not receive an amended charge or withdrawal from you on or before March 2, 1987, I shall dismiss your charge. If you have any questions on how to proceed, please call me at (415) 557-1350.

Sincerely yours,

Peter Haberfeld
Regional Attorney

Enclosures