

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



UNIVERSITY COUNCIL, AFT,)
LOCALS 2034, 2199, 1990, 1474,)
2141, 1966, 2226, 1795 and 2023,)
)
Charging Party,) Case No. SF-CE-44-H
)
v.) PERB Decision No. 725-H
)
REGENTS OF THE UNIVERSITY OF)
CALIFORNIA,) March 21, 1989
)
Respondent.)
_____)

Appearances: Steiner & Gerstein by Robert S. Gerstein, Attorney, for University Council, AFT, Locals 2034, 2199, 1990, 1474, 2141, 1966, 2226, 1795 and 2023; Susan M. Thomas, Attorney, for Regents of the University of California.

Before Craib, Shank and Camilli, Members.

DECISION

CRAIB, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Regents of the University of California (University) to the proposed decision of a PERB administrative law judge (ALJ) finding that the University unlawfully denied University Council, AFT, Locals 2034, et. al (U.C.-AFT) access to the University's internal mail system. This conduct was found to have violated section 3571, subdivisions (a) and (b) of the Higher Education Employer-Employee Relations Act (HEERA).¹

¹HEERA is codified at Government Code section 3560 et seq. All references are to the Government Code unless otherwise specified. Subdivisions (a) and (b) of section 3571 state:

It shall be unlawful for the higher education employer to:

PROCEDURAL HISTORY

The original unfair practice charge concerned only access to the University's mail system at its San Diego campus. The charge was later amended to include allegations that the University had also refused access to the mail system at its Riverside, Berkeley, Davis and Irvine campuses. The amended charge also alleged that this denial of access represented a systemwide policy of the University. An additional allegation concerning the opening of mail at the Davis campus was later withdrawn. The University, in its answer to the amended charge, admitted the denial of access to the mail systems at the named campuses and admitted that this represented a systemwide policy.

Finding that there were no triable issues of fact, the ALJ decided the case on a motion for summary judgment filed by U.C.-AFT. Thus, the sole issue decided was whether it was a violation of HEERA for the University to refuse to allow U.C.-AFT to send mail through the University mail system without first paying United States postage.

(a) Impose 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.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

In defense of its denial of access to the mail system, the University put forth several affirmative defenses, which may be summarized as follows:

1. The Private Express Statutes² prohibit the University from carrying unstamped employee organization mail.

2. HEERA does not grant to employee organizations the right to have their unstamped mail carried through the University's mail system.

3. There are numerous and extensive alternative means of access available to employee organizations.

4. Since use of the mail system by employee organizations would be burdensome, the denial of access is justified by operational necessity.

The ALJ found no merit in any of the University's defenses because the same arguments had been considered and rejected by the Board itself in University of California at Berkeley (Wilson) (1981) PERB Decision No. 183-H. In that decision, the Board declined to consider the effect of the Private Express Statutes upon access rights under HEERA. Decision No. 183-H was appealed and was pending before the First District Court of Appeal when the ALJ issued his proposed decision in the instant case. Later, the Court of Appeal, noting that HEERA access rights are subject

²18 U.S.C, sections 1693-1699; 39 U.S.C. sections 601-606. These statutes establish the postal monopoly of the United States Postal Service and generally prohibit the private carriage of letters over postal routes without the payment of postage.

to "reasonable regulations,"³ found that the Board had erred by failing to consider the effect of federal law and remanded to the Board for that determination. (Regents of the University of California v. Public Employment Relations Board (1983) 139 Cal.App.3d 1037 [189 Cal.Rptr. 298]).

On remand, the Board then issued University of California at Berkeley (Wilson) PERB Decision No. 420-H, in which the Board determined that various exceptions to the Private Express Statutes applied to the University's carriage of unstamped employee organization mail. Consequently, the Board concluded that the Private Express Statutes placed no limits upon the access rights granted under HEERA. As it had in Decision No. 183-H, the Board in Decision No. 420-H also rejected University defenses not based on the Private Express Statutes.

The Board's holding concerning the effect of the Private Express Statutes was again appealed to the First District Court of Appeal, which affirmed the Board's decision. (Regents of the University of California v. Public Employment Relations Board

³HEERA section 3568 states:

Subject to reasonable regulations, employee organizations shall have the right of access at reasonable times to areas in which employees work, the right to use institutional bulletin boards, mailboxes and other means of communication, and the right to use institutional facilities at reasonable times for the purpose of meetings concerned with the exercise of the rights guaranteed by this act.

(1986) 182 Cal.App.3d 71 [227 Cal. Rptr. 57]). The California Supreme Court denied the University's petition for review. However, the case was then appealed to the U.S. Supreme Court, which reversed the California Court of Appeal. (Regents of the University of California v. Public Employment Relations Board (1988) 485 U.S. _____ [99 L. Ed. 2d 664, 108 S. Ct. 1404] (hereafter U.C.Regents)).⁴ The court held that neither the "Letters of the Carrier" nor the "Private Hands Without Compensation" exceptions to the Private Express Statutes permitted the University to carry unstamped union letters in its internal mail system.⁵ As a result, access rights under HEERA are restricted by the operation of the Private Express Statutes.

DISCUSSION

In its exceptions to the ALJ's proposed decision, the University argues that this case should simply be dismissed in light of the U.S. Supreme Court's decision in U.C. Regents. U.C.-AFT, in its response, argues that the U.C. Regents case should be restricted to its facts and attempts to distinguish the instant case. U.C.-AFT's contention will be addressed first.

⁴Though the proposed decision in the instant case was issued in 1982, the matter has only recently come before the Board itself. The parties were granted a series of extensions of time to file exceptions to the proposed decision while the University's appeals of PERB Decision No. 420-H wound their way through the courts.

⁵The Board had relied on both exceptions in its decision, while the California Court of Appeal, finding the "Letters of the Carrier" exception applicable, did not address the "Private Hands Without Compensation" exception.

U.C.-AFT argues that U.C. Regents is distinguishable because that case involved an organizing effort by a nonexclusive representative, while the present case involves mail sent by an exclusive representative in an effort to maintain harmonious relations between the employer and the union. Therefore, U.C.-AFT asserts, the U.S. Supreme Court's holding that the union's mail did not concern the "current business" of the University (and thus did not fall within the "Letters of the Carrier" exception to the Private Express Statutes) is not controlling in the present case.

While U.C.-AFT asserts that the language of the U.C. Regents decision indicates that it should be restricted to the facts of that case (i.e., an organizing effort by a nonexclusive representative), in our review of that decision, we have found no language that warrants such a narrow reading. The Court began its opinion by describing the issue before it in the following fashion: "This case presents the question of whether a state university's delivery of unstamped letters from a labor union to university employees violates the Private Express Statutes" (emphasis added) (99 L.Ed.2d at p.669). Moreover, in the several places where the Court states its holding, it speaks generally of the use of internal mail systems by "labor unions" or "the Union" and does not mention the union's nonexclusive status nor its organizing efforts. Perhaps most revealing is the absence of any reference to the union's nonexclusive status or organizing efforts in the Court's discussion of whether the "Letters of the

Carrier" exception allowed the carriage of the union's letters. In rejecting the applicability of that exception, the Court concluded that the union's letters did not relate to the "current business" of the University (99 L.Ed.2d at pp. 671-673). We conclude that the Court's decision is most fairly read to encompass all union "letters" and, therefore, it is equally applicable to the present case.

The University's assertion that this case should be dismissed in its entirety ignores the fact that the only issue on appeal from PERB Decision No. 420-H was the effect of the Private Express Statutes on the right of access to internal mail systems granted under HEERA. That was the only issue addressed by the California Court of Appeal in its review of Decision No. 420-H and the only issue addressed by the U.S. Supreme Court in its review of the Court of Appeal's decision. Therefore, PERB Decision No. 420-H remains as established precedent under HEERA, with the exception of its holding concerning the effect of the Private Express Statutes. Accordingly, access to the University's internal mail system must still be afforded to those unstamped union mailings which fall outside the scope of the postal monopoly, subject, of course, to any other limitations arising under HEERA section 3568.

In addition to its reliance on the Private Express Statutes, the University has defended its denial of access by asserting that HEERA does not grant access to internal mail systems, that such access would be burdensome and that there are alternative

means of access available to employee organizations. As noted above, these arguments were considered and rejected by the Board in PERB Decision No. 183-H (relied on by the ALJ) and in the decision that later replaced it, PERB Decision No. 420-H.

In PERB Decision No. 420-H, the Board held that HEERA provided employee organizations the right to use internal mail systems, subject to the reasonable regulation proviso of section 3568. This was consistent with a previous interpretation of nearly identical language in the Educational Employment Relations Act. (Richmond Unified School District and Simi Valley Unified School District (1979) PERB Decision No. 99.)

The Board, in Decision No. 420-H, also rejected the University's argument that granting access to its internal mail system would be unduly burdensome. The Board found the purported burden to be merely speculative. There is no reason to find otherwise here, especially in light of the severe restrictions on access that were mandated by the U.S. Supreme Court in U.C. Regents. Moreover, access remains subject to other forms of "reasonable regulation" pursuant to section 3568.⁶

The Board has also previously rejected the University's argument that the existence of alternative means of communication justifies denial of access to a particular means of communication. In PERB Decision No. 420-H, the Board held that

⁶With the exception of the issues raised by the University's defenses, we need not determine in this case what constitutes "reasonable regulation" under section 3568, and we decline to do so.

the right of access extends independently to each statutorily-recognized means of communication and that the availability of alternative means of communication becomes relevant only when a particular means is shown to be disruptive or burdensome.

CONCLUSION

In sum, we affirm the ALJ's proposed decision finding that the University unlawfully denied U.C.-AFT access to its internal mail system, however, such access must be in compliance with the Private Express Statutes and applicable postal regulations. Consistent with the discussion above, the right of access is further subject to "reasonable regulation" within the meaning of HEERA section 3568.

ORDER

Based upon the foregoing facts, conclusions of law and the entire record in this case, it is found that the Regents of the University of California (University) has violated section 3571, subdivisions (a) and (b) of the Higher Education Employer-Employee Relations Act by denying University Council, AFT, Locals 2034, 2199, 1990, 1474, 2141, 1966, 2226, 1795 and 2023 access to the University's internal mail system. However, such access is limited by the operation of the Private Express Statutes and applicable postal regulations, as well as by other "reasonable regulations" within the meaning of HEERA section 3568. It is hereby ORDERED that the University and its representatives shall:

A. CEASE AND DESIST FROM:

1. Denying employee organizations access, as limited above, to its internal mail system;

2. Interfering with employees' rights granted under HEERA by refusing to allow their employee organizations access to the University's internal mail system.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS WHICH ARE NECESSARY TO EFFECTUATE THE POLICIES OF THE HIGHER EDUCATION EMPLOYER-EMPLOYEES RELATIONS ACT:

1. Within thirty-five (35) days following the date this Decision is no longer subject to reconsideration pursuant to PERB Regulation 32410, post copies of the Notice, attached hereto as an Appendix, at its headquarters office and at all locations where notices to employees are customarily placed. The Notice must be signed by an authorized agent of the University indicating that the University will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to insure that said Notices are not reduced in size, altered, defaced or covered by any other materials.

2. Written notification of the actions taken to comply with this Order shall be made to the San Francisco Regional Director of the Public Employment Relations Board in accordance with her instructions.

Members Shank and Camilli joined in this Decision.

