

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



AMERICAN FEDERATION OF STATE,)
COUNTY AND MUNICIPAL EMPLOYEES,)
Charging Party,) Case No. LA-CE-258-H
v.) PERB Decision No. 850-H
REGENTS OF THE UNIVERSITY OF)
CALIFORNIA,) October 30, 1990
Respondent.)
_____)

Appearance: Cliff Fried, for American Federation of State,
County and Municipal Employees.

Before Hesse, Chairperson; Shank, Camilli and Cunningham,
Members.

DECISION AND ORDER

This case is before the Public Employment Relations Board (Board) on appeal by the American Federation of State, County and Municipal Employees of a Board agent's dismissal (attached hereto) of its charge that the Regents of the University of California violated section 3571(a), (b) and (c) of the Higher Education Employer-Employee Relations Act (HEERA).¹ We have reviewed the dismissal and, finding it to be free of prejudicial error, adopt it as the Decision of the Board itself.

¹HEERA is codified at Government Code section 3560 et seq. Unless otherwise indicated, all statutory references are to the Government Code.

The unfair practice charge in Case No. LA-CE-258-H is hereby
DISMISSED WITHOUT LEAVE TO AMEND.

By the Board²

²Member Craib did not participate in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

LOS Angeles Regional Office
3530 Wilshire Blvd., Suite 650
Los Angeles, CA 90010-2334
(213)736-3127



May 30, 1990

Cliff Fried
13833 Oxnard Street, #16
Van Nuys, California 91401

RE: DISMISSAL AND REFUSAL TO ISSUE COMPLAINT, Unfair Practice Charge No. LA-CE-258-H, American Federation of State, County and Municipal Employees v. Regents of the University of California

Dear Mr. Fried:

I indicated to you in my attached letter dated May 3, 1990, 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 that would correct the deficiencies explained in that letter, you should amend the charge accordingly. You were further advised that unless you amended the charge to state a prima facie case, or withdrew it prior to May 10, 1990, the charge would be dismissed. I later extended this deadline to May 25, 1990.

On May 25, 1990, you filed an amendment to the charge. The amendment challenges the accuracy or the relevance of footnote 1 on page 3 of my May 3 letter, which quotes findings of fact made by an Administrative Law Judge in a separate proceeding. My May 3 letter does not, however, rely upon those findings of fact for any of its conclusions.

The amendment alleges that "there was [sic] negotiations on parking in which UC [the University] did not indicate that there was a bond issue which made it impossible to negotiate parking fee reductions as AFSCME proposed during negotiations." It is not alleged when these negotiations took place. More significantly, it is not alleged that at the time of these negotiations AFSCME made a request for relevant information. As held in Oakland Unified School District (1982) PERB Decision No. 275, at p. 18, "Absent such a request, the [employer] is under no obligation to provide information," and its failure to provide

Dismissal and Refusal to
Issue Complaint
LA-CE-258-H
May 30, 1990
Page 2

information is not evidence of bad faith.¹ I am therefore dismissing the charge based on the facts and reasons contained in this letter and in my May 3 letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, 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 (California Administrative Code, title 8, section 32635(a)). To be timely filed, the original and five 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, certified or Express United States mail postmarked no later than the last date set for filing (California Administrative Code, title 8, section 32135). 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 copies of a statement in opposition within twenty calendar days following the date of service of the appeal (California Administrative Code, title 8, 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 California Administrative Code, title 8, section 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.

¹There is no allegation that the University deliberately misrepresented or concealed information about the bond so as to prevent negotiations about it. Compare, e.g., Avila Group, Inc. (1975) 218 NLRB 633 [89 LRRM 1364]; Royal Plating & Polishing Co., Inc. (1966) 160 NLRB 990 [63 LRRM 1045].

Dismissal and Refusal to
Issue Complaint
LA-CE-258-H
May 30, 1990
Page 3

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 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 (California Administrative Code, title 8, section 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,

JOHN W. SPITTLER
General Counsel

By
Thomas J. Allen
Regional Attorney

Attachment

cc: James Odell

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Boulevard, Suite 650
Los Angeles, CA 90010-2334
(213) 736-3127



May 3, 1990

Cliff Fried
13833 Oxnard Street, #16
Van Nuys, CA 91401

RE: WARNING LETTER, Unfair Practice Charge No. LA-CE-258-H,
American Federation of State County and Municipal Employees
v. Regents of the University of California

In the above-referenced charge, the American Federation of State, County and Municipal Employees (AFSCME) alleges that the University of California (University) made unilateral changes and failed to provide information. This conduct is alleged to violate Government Code sections 3571(a), (b) and (c) of the Higher Education Employer-Employee Relations Act (HEERA).

My investigation of the charge revealed the following facts.

AFSCME is the exclusive representative of the University's Service Unit, Clerical and Allied Services Unit, and Patient Care Technical Unit. Since July 1, 1986, the collective bargaining agreements for all three units have provided in part as follows:

Article 27
PARKING

A. The University shall provide parking and parking-related services at each campus or the Laboratory to the same extent and under the same conditions as normally provided for other University non-managerial, non-supervisory, non-confidential, non-represented staff employees at the employee's location.

B. It is understood and agreed that parking spaces designated for employees may from time to time be eliminated or reassigned due to construction, special events, and/or operational needs of the University.

C. The provisions of this Article are not subject to Article 6 - Grievance Procedure or Article 7 - Arbitration Procedure of this Agreement.

Article 42
WAIVER

A. The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and the understandings and agreements arrived at by the parties after the exercise of the right and opportunity are set forth in this Agreement. The rights and procedures granted and set forth under Staff Personnel Policy will no longer apply to employees covered by this Agreement. The University and AFSCME, for the life of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to, or covered in this Agreement, or with respect to any subject or matter not specifically referred to or covered by this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement.

On or about August 6, 1986, the University sold Parking System Revenue Bonds for its Los Angeles campus (UCLA). The Official Statement concerning these bonds provided in part as follows:

Establishment of Regulations, Rates and Charges. So long as Bonds are Outstanding, The Regents will establish and maintain such rules and regulations and such rentals, rates, fees and charges for the use of the Los Angeles System as may be necessary (1) to pay the costs of maintenance and operation thereof; and (2) to maintain Net Revenues at 135% of the Maximum Aggregate Annual Debt Service.

Warning Letter
LA-CE-258-H
May 3, 1990
Page 3

The University did not give AFSCME prior notice of this provision.

On February 15, 1989, the University sent to all UCLA employees a memo stating that effective July 1, 1989, campus parking fees would increase from \$22 to \$30 per month, and from \$3 to \$4 per entry. The memo explained in part, "This fee increase is required in order to keep pace with escalating operating costs and to provide sufficient funds for the payment of bond indebtedness on existing and planned future parking facilities."

On March 28, 1989, AFSCME responded to the University with a letter stating in part as follows:

Your attached letter received on February 21, 1989, unilaterally imposes and implements a parking fee increase for all bargaining unit employees with no prior notice, discussion or negotiations with AFSCME Locals 3234, 3235, 3238, 3239 and 3270.

The unilateral 36.4% increase in parking fees is in violation of the collective bargaining agreement between AFSCME and the University of California. The parking fee increase results in a de facto decrease in bargaining employee unit salaries that was not

¹In a Proposed Decision issued on March 26, 1990, in Unfair Practice Case No. LA-CE-250-H, Cliff Fried v. Regents of the University of California, at p. 9, fn. 6, the Administrative Law Judge made the following findings of fact:

[AFSCME Representative Cliff] Fried testified that, prior to the 1989 parking increase, he was unaware of the specific limitations imposed by the bond. However, funding limitations stemming from the bond indebtedness as well as the inability to use state funds had been discussed during the four prior parking increases in 1981, 1982, 1985 and 1987. Although the specifics of these limitations may not have been discussed in detail, it is clear from the record that AFSCME and Fried were generally aware of these limitations prior to the 1989 increase.

negotiated, nor was the issue even raised during bargaining. Please consider this both a grievance filed at Step II of the grievance procedure and an immediate request for an expedited arbitration procedure to resolve this issue in as prompt a manner as possible. Please set up a Step II grievance meeting immediately.

The contract sections violated are: 1,3,4,5,15,17,33 and 42 and any other applicable contract sections. The remedy sought is the immediate rescinding of the fee increase with notices posted accordingly.

Prior to the Step II meeting, please provide the following information:

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6. Copies of any and all University policies, regulations, or laws affecting parking at UCLA.

7. All memos, letters and internal documents utilized in determining the need for or rationale for 34.6% [sic] parking fee increase.

On April 17, 1989, the University responded to AFSCME with a letter stating in part as follows:

The following information and attachments responds to your public record request as indicated:

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6. Attachments I, J, and K respond to this request.

7. Attachments L and M respond to this request.

The Official Statement concerning the bonds was not among the attachments.

Warning Letter
LA-CE-258-H
May 3, 1990
Page 5

On May 30, 1989, AFSCME's grievance was denied at Step 2. On May 31, 1989, AFSCME specifically requested a copy of the Official Statement concerning the bonds, and on June 5, 1989, the University provided a copy. Also on June 5, 1989, AFSCME took its grievance to Step 3. AFSCME later withdrew the grievance without prejudice.

The parking fee increase was implemented on July 1, 1989.

Based on the facts stated above, the charge does not state a prima facie violation of the HEERA, for the reasons that follow.

AFSCME contends that both the 1986 bond and the 1989 fee increase were unilateral changes in parking fee policy that should have been negotiated with AFSCME. In Articles 27 and 42 of the collective bargaining agreements, however, AFSCME clearly and unmistakably waives its right to bargain about such parking fee issues. In Article 42 (Waiver), AFSCME and the University "each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to, or covered in this Agreement." Article 27 (Parking) obligates the University to "provide parking and parking-related services at each campus or the Laboratory to the same extent and under the same conditions as normally provided for other University non-managerial, non-represented staff employees at the employee's location [emphasis added]." The University is not obligated to have any particular "conditions" on parking, so long as the "conditions" are the same as for other employees. Although the term "conditions" is broader than fees, in its plain meaning it includes fees, which must be paid as a "condition" of parking. AFSCME therefore waived its right to negotiate about parking fee issues, so long as the University made those fees the same for AFSCME-represented employees as for other employees.

AFSCME also contends that the University failed to provide information about the bond. When AFSCME requested "policies, regulations or laws" and "memos, letters and internal documents" concerning parking (on March 28, 1989), the University provided five different documents (on April 17, 1989). The University did not at that time provide the Official Statement concerning the bonds, but it does not appear that the Official Statement itself is a policy, regulation, law, memo, letter or internal document. (The Official Statement appears to be an external document that summarizes indenture provisions.) When AFSCME specifically requested the Official Statement (on May 30, 1989), the University provided it five days later (on June 5, 1989).

Warning Letter
LA-CE-258-H
May 3, 1990
Page 6

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 any additional facts that would correct the deficiencies explained above, please amend the charge accordingly. 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 must be signed under penalty of perjury by the charging party. The amended charge must be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before May 10, 1990, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3127.

Sincerely,

Thomas J. Alien
Regional Attorney