

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION & ITS CHAPTER 244,

Charging Party,

v.

COLTON JOINT UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. LA-CE-4708-E

PERB Decision No. 1737

January 20, 2005

Appearances: California School Employees Association by Maureen C. Whelan, Attorney, for California School Employees Association & its Chapter 244; Atkinson, Andelson, Loya, Ruud & Romo by Ronald C. Ruud, Attorney, for Colton Joint Unified School District.

Before Duncan, Chairman; Whitehead and Shek, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (Board) on appeal by the California School Employees Association & its Chapter 244 (CSEA) of a Board agent's dismissal (attached) of its unfair practice charge. CSEA alleged that the Colton Joint Unified School District (District) violated the Educational Employment Relations Act (EERA)¹ by the unilateral transfer of two unit employees to a different work location two days a week.

The Board has reviewed the entire record in this matter, including the original and both amended unfair practice charges, the warning and dismissal letters, CSEA's appeal and the District's response. The Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself.

¹EERA is codified at Government Code section 3540, et seq.

ORDER

The unfair practice charge in Case No. LA-CE-4708-E is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Members Whitehead and Shek joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8387
Fax: (916) 327-6377



April 5, 2004

Denise Williams, Labor Relations Representative
California School Employees Association
10211 Trademark Street, Unit A
Rancho Cucamonga, CA 91730

Re: California School Employees Association & its Chapter 244 v. Colton Joint Unified School District
Unfair Practice Charge No. LA-CE-4708-E
DISMISSAL LETTER

Dear Ms. Williams:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 17, 2003. The California School Employees Association & its Chapter 244 (CSEA) alleges that the Colton Joint Unified School District (District) violated the Educational Employment Relations Act (EERA)¹ by unilaterally transferring Instructional Assistants Roz Casarez and Valerie Holmes two days a week from their regular District assignments to assignments at Las Banderas Academy, Inc., a separate public school employer. Subsequently, following discussions with PERB Regional Attorney, Marie Nakamura, you filed a First Amended Charge on February 2, 2004 in which you allege that certain terms and conditions of employment were altered by the District for Ms. Casarez and Ms. Holmes.

I indicated to you in my attached letter dated March 3, 2004, 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 which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to March 17, 2004, the charge would be dismissed.

You were granted additional time to submit further information. On March 29, 2004, you filed a Second Amended Charge. The additional information you provided was that all classified employees had always worked at sites within the District and that the reassignment of the two Instructional Assistants to Las Banderas Academy was a unilateral change in the transfer/reassignment language contained in the written agreement with the District. You assert that this change was implemented with no notice to CSEA as exclusive representative of the classified employees.

As I pointed out in my March 3 letter Article 10.5 of the current written agreement provides:

¹ EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

Administrative Transfers Transfers of bargaining unit members may be initiated by the District management at any time, except for disciplinary purposes, whenever such transfer is deemed in the best interest of the District, as defined by the District management.

There is no apparent limitation placed as to which work locations that employees may be transferred.

Further, as I pointed out, unilateral changes are considered "per se" violations if certain criteria are met. For a change in job responsibilities, the charging party must demonstrate actual changes in the employee's job duties. If the changes are reasonably comprehended within the existing job duties, an assignment of such duties, even if never performed before, is not a violation. (Rio Hondo Community College District (1982) PERB Decision No. 279.) You have not indicated how the employees' jobs have changed other than to point to several health and safety concerns.²

Therefore, I am dismissing the charge based on the facts and reasons contained in this letter and my March 3, 2004 letter.

Right to Appeal

Pursuant to PERB Regulations,³ 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. (Regulation 32635(a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing. (Regulations 32135(a) and 32130.) A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Regulations 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174

² As I stated in the warning letter, you have not indicated that CSEA ever requested to negotiate the changes in working conditions with the District or that the District refused to respond to such a request. In Newman -Crows Landing Unified School District (1982) PERB Decision No. 223 the Board held that absent a request to meet and negotiate regarding effects of changes on matters within scope, it should not be assumed that charging party made such a request simply by acknowledging the changes.

³ PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

FAX: (916) 327-7960

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 (20) calendar days following the date of service of the appeal. (Regulation 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 Regulation 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. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Regulation 32135(c).)

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. (Regulation 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,

ROBERT THOMPSON
General Counsel

By _____
Roger Smith
Labor Relations Specialist

Attachment

cc: Ronald C. Ruud, Esq.

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8387
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March 3, 2004

Denise Williams, Labor Relations Representative
California School Employees Association
10211 Trademark Street, Unit A
Rancho Cucamonga, CA 91730

Re: California School Employees Association & its Chapter 244 v. Colton Joint Unified School District
Unfair Practice Charge No. LA-CE-4708-E
WARNING LETTER

Dear Ms. Williams:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 17, 2003. The California School Employees Association & its Chapter 244 (CSEA) alleges that the Colton Joint Unified School District (District) violated the Educational Employment Relations Act (EERA)¹ by unilaterally transferring Instructional Assistants Roz Casarez and Valerie Holmes two days a week from their regular District assignments to assignments at Las Banderas Academy, Inc., a separate public school employer. Subsequently, following discussions with PERB Regional Attorney, Marie Nakamura, you filed a First Amended Charge on February 2, 2004 in which you allege that certain terms and conditions of employment were altered by the District for Ms. Casarez and Ms. Holmes.

In response to the charge and its amendment, the District cited the transfer language of the most current agreement between itself and CSEA. Article 10.5 provides:

Administrative Transfers Transfers of bargaining unit members may be initiated by the District management at any time, except for disciplinary purposes, whenever such transfer is deemed in the best interest of the District, as defined by the District management.

¹ EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

Further, the District indicated that pursuant to its obligation under Education Code Section 47641,² it was providing the two instructional aides to Las Banderas Academy Inc., a charter school within the District's geographical boundaries. The two aides provide non-certificated services to special education students at a middle and high school facility.

In determining whether a party has violated EERA section 3543.5(c), PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. (Stockton Unified School District (1980) PERB Decision No. 143.) Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented before the employer notified the exclusive representative and gave it an opportunity to request negotiations. (Walnut Valley Unified School District (1981) PERB Decision No. 160; Grant Joint Unified High School District (1982) PERB Decision No. 196.)

In order to prevail on a theory of a change in job responsibilities, the charging party must demonstrate actual changes in the employee's job duties. If the changes are reasonably comprehended within the existing job duties, an assignment of such duties, even if never performed before, is not a violation. (Rio Hondo Community College District (1982) PERB Decision No. 279.)

The employees in question still are employed by the District while at work at Las Banderas. Their work locations have been changed two days per week but you have not indicated that job duties have changed, therefore the charge fails to establish a prima facie violation of EERA.

You allege in your charge that the assignment of the two instructional aides to work locations other than at District sites constituted a unilateral change. The transfer language of the current agreement gives the District discretion to transfer employees so long as is not for disciplinary reasons. You have not asserted that the transfer was for disciplinary reasons. The language of the agreement appears to support the District's position that there has been no change.

The health and safety concerns you cited in the amended charge may certainly be viewed as possible subjects for "effects bargaining". But you have not indicated that CSEA ever requested to negotiate the changes in working conditions with the District or that the District refused to respond to such a request. In Newman -Crows Landing Unified School District (1982) PERB Decision No. 223 the Board held that absent a request to meet and negotiate regarding effects of changes on matters within scope, it should not be assumed that charging party made such a request simply by acknowledging the changes.

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 additional facts that would correct the deficiencies

² This Code section provides for the establishment of a local education agency for purposes of providing a special education plan. The District contends that it and Las Banderas Academy participate in this plan.

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March 3, 2004

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explained above, please amend the charge. 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 be signed under penalty of perjury by the charging party. The amended charge must have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before March 17, 2004, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Roger Smith
Labor Relations Specialist

RCS