STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

JAMES HSIONG, Charging Party, v. SAN FRANCISCO UNIFIED SCHOOL DISTRICT, Respondent.	Case No. SF-CE-2661-E PERB Decision No. 2000 January 20, 2009

Appearances: James Hsiong, on his own behalf; Fagen, Friedman & Fulfrost by Elizabeth B. Mori, Attorney, for San Francisco Unified School District.

Before Neuwald, Chair; McKeag and Wesley, Members.

DECISION

WESLEY, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by James Hsiong (Hsiong) of a Board agent's dismissal of his unfair practice charge. The charge alleged that the San Francisco Unified School District (District) violated the Educational Employment Relations Act (EERA)[1] by refusing to apply retroactive salary increases to Hsiong and other former employees of the District.

After reviewing the entire record, including the unfair practice charge, the Board agent's warning and dismissal letters, Hsiong's appeal and the District's response, the Board affirms the dismissal of the unfair practice charge in accordance with the following discussion.

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

BACKGROUND

Hsiong is one of a small group of former employees of the District who were laid off in June 2005. From approximately 2001 through the layoff in 2005, these employees were members of the bargaining unit exclusively represented by the International Federation of Professional and Technical Engineers Local 21 (IFPTE).

Between 2001 and April 2007, employees represented by IFPTE were working without a collective bargaining agreement, and did not receive salary increases. However, in April 2007, IFPTE and the District reached an agreement which provided for retroactive salary increases for eligible employees. The agreement was titled, and reads in relevant part:

> 'IFPTE Local 21/SFUSD Tentative Agreement
> April 26, 2007', . . .
>
> The San Francisco Unified School District [(District)] and the International Federation of Professional and Technical Engineers, Local 21 [(IFPTE)] agree to the following salary increases as delineated below:
>
> The 2000-2001 salary schedules shall be increased by 3% effective July 1, 2001.
> The 2001-2002 salary schedules shall be increased by 2.5% effective July 1, 2002[.]
> The 2006-2007 salary schedules shall be increased by 2% effective July 1, 2006[.]
> The 2006-2007 salary schedules shall be further increased by 9.5% effective May 2, 2007[.]

The agreement did not contain specific language addressing application of the retroactive pay provisions to individuals who were no longer employed by the District at the time of the agreement. However, the District applied the retroactive increase to employees who had worked during the relevant time period, but were retired or deceased as of April 2007.

Hsiong and others who were laid off in June 2005, were informed by the District in or after April 2007, that they were not eligible for the retroactive pay increase. After making

several unsuccessful pleas to the District to apply the retroactive salary increase to the group of previously laid off employees, Hsiong filed this unfair practice charge.

DISCUSSION

The Board agent determined that Hsiong did not have standing to file the charge because as of June 2005 he was no longer an employee covered by EERA. Notwithstanding the lack of standing, the Board agent also analyzed the charge under unilateral change and discrimination theories, finding that Hsiong did not have standing to allege the District unilaterally changed policy, and that he did not establish a prima facie case of discrimination.

EERA section 3541.5(a) states, in relevant part:

> Any employee, employee organization, or employer shall have the right to file an unfair practice charge . . .

A public school employee is defined under EERA section 3540.1(j) as:

> [A]ny person employed by any public school employer except persons elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees.

In order to have standing to file an unfair practice charge under EERA, a charging party must have been an employee, employee organization, or employer at the time of the alleged unfair practice.[2] (Monterey Peninsula Community College District (2002) PERB Decision No. 1492; California Union of Safety Employees (Trevisanut, et al.) (1993) PERB Decision No. 1029-S.)

In this case, Hsiong's employment with the District ended in June 2005. The District's alleged unlawful conduct occurred in or after April 2007 when the District refused to give Hsiong and other previously laid off employees retroactive salary increases for the period of time they worked prior to June 2005. It is clear that Hsiong was not an employee of the

[2]Applicants for employment also have certain rights under EERA section 3543.5(a).

District when the District made this decision in April 2007. Therefore, the Board agent properly found that Hsiong lacked standing to file an unfair practice charge.[3] Accordingly, PERB is without jurisdiction and the charge is dismissed.

ORDER

The unfair practice charge in Case No. SF-CE-2661-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chair Neuwald and Member McKeag joined in this Decision

[3]As Hsiong does not have standing under EERA, it is unnecessary to evaluate the unilateral change and discrimination theories covered by the Board agent.