



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD
UNFAIR PRACTICE CHARGE

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2013 MAR 19 PM 1:11

DO NOT WRITE IN THIS SPACE:

Case No:

003003-E

Date Filed:

03/19/13

INSTRUCTIONS: File the original and one copy of this charge form in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached to each copy. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE? NO YES If yes, Case No.

1. CHARGING PARTY: EMPLOYEE EMPLOYEE ORGANIZATION EMPLOYER PUBLIC¹

a. Full name: International Brotherhood of Teamsters, Local 856

b. Mailing address: 453 San Mateo Avenue, San Bruno, CA 94066-4415

c. Telephone number: (650) 635-0111

d. Name, title and telephone number of person filing charge: Sarah Sandford-Smith, Attorney for Charging Party, (510) 625-9700

e. Bargaining unit(s) involved: Maintenance & Operations and Clerical, Secretarial and Technical units

2. CHARGE FILED AGAINST: (mark one only) EMPLOYEE ORGANIZATION EMPLOYER

a. Full name: Mount Diablo Unified School District

b. Mailing address: 1936 Carlotta Drive, Concord, CA 94519

c. Telephone number: (925) 682-8000

d. Name, title and telephone number of agent to contact: Greg Rolen, General Counsel, (925) 682-8000, ext. 4001

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

a. Full name:

b. Mailing address:

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Government Code section 18524.)

a. Full name:

b. Mailing address:

c. Agent:

¹ An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569.

5. GRIEVANCE PROCEDURE

Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?

Yes No

6. STATEMENT OF CHARGE

a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)

- Educational Employment Relations Act (EERA) (Gov. Code sec. 3540 et seq.)
- Ralph C. Dills Act (Gov. Code sec. 3512 et seq.)
- Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code sec. 3560 et seq.)
- Meyers-Milias-Brown Act (MMBA) (Gov. Code sec. 3500 et seq.)
- Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Pub. Utilities Code sec. 99560 et seq.)
- Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code sec. 71630 – 71639.5)
- Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code sec. 71800 et seq.)

b. The specific Government or Public Utilities Code section(s), or PERB regulation section(s) alleged to have been violated is/are: Cal. Gov. Code sections 3543.5(b) and (d).

c. For MMBA, Trial Court Act and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are (*a copy of the applicable local rule(s) MUST be attached to the charge*):

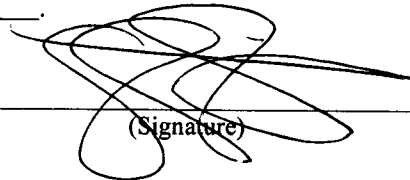
d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law*. A statement of the remedy sought must also be provided. (*Use and attach additional sheets of paper if necessary.*)
Please see attachment 6(d).

DECLARATION

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief and that this declaration was executed on March 19, 2013
(Date)

at Oakland, California
(City and State)

Sarah Sandford-Smith
(Type or Print Name)



(Signature)

Title, if any: Attorney

Mailing address: 483 9th Street, Suite 200, Oakland, CA 94607

Telephone Number: (510) 625-9700

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Alameda,
State of California. I am over the age of 18 years and not a party to the within entitled
cause. The name and address of my residence or business is Beeson, Tayer & Bodine
483 Ninth Street, 2nd Floor, Oakland, CA 94607

On March 19, 2013, I served the Unfair practice charge
(Date) (describe document(s))

_____ on the parties listed below (include name, address and, where applicable, fax number) by (check the applicable method or methods):

placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;

personal delivery;

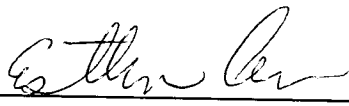
facsimile transmission in accordance with the requirements of PERB Regulations 32090 and 32135(d).

Greg Rolen
Mt. Diablo Unified School District
1936 Carlotta Drive
Concord, CA 94519

Steven Lawrence, Ph.D.
Mt. Diablo Unified School District
1936 Carlotta Drive
Concord, CA 94519

I declare under penalty of perjury that the foregoing is true and correct and that this
declaration was executed on March 19, 2013, at Oakland, California.

Esther Aviva
(Type or print name)


(Signature)

ATTACHMENT 6(d)
Statement of Charge

Introduction

International Brotherhood of Teamsters, Local 856 (“Local 856”) alleges that the Mount Diablo Unified School District (“the District”) has committed unfair labor practices by violating the Educational Employment Relations Act (“EERA”). Specifically, the District has violated the EERA by: 1) improperly denying Local 856 its right of access for representational activities, and 2) demonstrating a preference for another employee organization.

Parties to the Charge:

1. International Brotherhood of Teamsters, Local 856 is, and at all times relevant was, an employee organization within the meaning of the Educational Employment Relations Act (“EERA”) (Cal. Gov Code § 3540 *et seq.*).
2. Mount Diablo Unified School District (“the District”) is, and at all times relevant was, a public school employer within the meaning of the EERA (Cal. Gov. Code § 3540.1(k)).
3. The Public Employees Union, Local 1 (“PEU”) is the exclusive representative of District employees in the Maintenance, Operations and Facilities/Transportation/Landscape/Warehouse/Food and Nutrition Services/Technology and Information Services/Substitute Custodian and School Bus Driver (“M&O”) units, and a Memorandum of Understanding governing the terms and conditions of employment for employees in the Clerical, Secretarial and Technical (“CST”) units. The District and PEU, at all relevant times, have been parties to a Memorandum of Understanding (“MOU”) governing the terms and conditions of employment for employees in the M&O units, and a MOU governing the terms and conditions of employment for employees in the CST units. Both MOUs became effective July 1, 2010 and remain in effect until midnight, June 30, 2013.
4. At all times relevant herein, Local 856 has engaged in organizational activities, seeking to decertify PEU, and represent employees in the M&O and CST units.

Statement of Facts Constituting Charge of Unfair Practice

5. Approximately four months ago, employees of the District approached Local 856, and expressed their desire to be represented by Local 856 instead of PEU. After hearing numerous complaints from employees of the District regarding their current representation by PEU, Local 856 engaged in an organizing efforts, directed towards employees in the M&O and CST units.

6. On March 18, 2013, Rudy Gonzalez, Business Agent/Organizer for Local 856, arrived at the District Office to provide informational flyers to employees as the employees were leaving work for the day. Along with Mr. Gonzalez were Peter Finn, Vice President of Local 856, Neil Saccoman, President of Local 856, Liliana Cortez, Representative/Organizer for Local

856, Ryan Camp, Representative/Community Outreach Coordinator for Local 856, and Mr. Camp's 9-year-old son, Gannon Camp.

7. Shortly after Mr. Gonzalez and the aforementioned individuals began passing out informational flyers and talking with employees as the employees left work, Deborah Cooksey, counsel for the District, approached Mr. Gonzalez. Ms. Cooksey told Mr. Gonzalez to cease and desist from providing information on the sidewalk in front of the District Office. Ms. Cooksey asserted that the sidewalk was District property, and that Mr. Gonzalez and the other representatives of Local 856 were not welcome to pass out information to District employees on District property. Mr. Gonzalez questioned Ms. Cooksey as to whether she would allow employees to distribute information if they were doing so on behalf of PEU. Ms. Cooksey responded in the affirmative.

8. Mr. Gonzalez and the other Local 856 representatives did not respond immediately to Ms. Cooksey's request. Ms. Cooksey became irritated, and informed Mr. Gonzalez and Mr. Finn that she was counsel for, and an employee of the District, and that she was ordering them to cease and desist, and to, "stop decertifying PEU." Deborah Hickey, a shop steward for PEU who was also present with Ms. Cooksey then remarked, "Yeah, we don't want you here."

9. After approximately fifteen minutes, Mr. Gonzalez, Mr. Finn and the other Local 856 representatives left the sidewalk in front of the District Office.

Statement of Unfair Practice Charge:

10. The District has violated the Educational Employment Relations Act, specifically California Government Code sections 3543.5(b) and (d), by impeding Local 856's right of access, and by demonstrating a clear preference for one employee organization over another.

Interference with right of access

11. The EERA provides that a public employer commits an unfair practice by denying employee organizations rights guaranteed to them under the EERA. (Cal. Gov. Code § 3543.5(b).)

12. Under the EERA, employee organizations have a right of access, at reasonable times, to employee work areas, and access to other means of communication, subject to reasonable regulations. The EERA does not limit the right of access to the "exclusive representative." Instead, all employee organizations have a right of access, so long as the access is for organizational communications. (*See Richmond Unified School District (1979) PERB Dec. No. 99.*)

13. By ordering Local 856 to cease and desist from providing organizational information to employees on the sidewalk in front of the District Office as the employees were leaving work, the District committed an unfair labor practice.

Demonstrating a preference for one employee organization over another

14. The EERA mandates that a public school employer may not “in any way encourage employees to join any organization in preference to another.” (Cal. Gov. Code § 3543.5(d).) This has been interpreted to impose on employers a strict neutrality requirement. (See *Santa Monica Community College District* (1979) PERB Dec. No. 103.) Accordingly, a public school employer cannot express an opinion, either directly or by implication, favoring one employee organization over another. (See *Clovis Unified School District* (1984) PERB Dec. No. 389.) Likewise, a public school employer cannot provide material assistance to one employee organization, and deny that assistance to another. (*Id.*)

15. By demanding that Mr. Gonzalez and Local 856 cease and desist from distributing information, and further demanding that Local 856 “stop decertifying” Public Employees Union, Local 1, the District unambiguously voiced its preference for PEU over Local 856, in violation of the EERA.

16. Furthermore, by informing Local 856 that it could not use the sidewalk to hand out flyers and talk with employees about organizational matters, but that it would allow PEU to do so, the District voiced its intention to provide PEU with material assistance that the District denied to Local 856. Such conduct is similarly an unfair labor practice under the EERA.

WHEREFORE, Charging Party requires that the District be ordered to:

- (1) Cease and desist from impeding Local 856’s right of access;
- (2) Cease and desist from indicating a preference for PEU over Local 856;
- (3) Post a notice informing employees that the District will not retaliate against them if they demonstrate support for Local 856;
- (4) Post a notice informing employees of the employer’s unlawful conduct and assuring them that the employer will comply with its duties under the Educational Employment Relations Act in the future; and
- (5) Comply with such other relief as PERB deems just and proper.