

with applicable law. Accordingly, the Board adopts the dismissal and warning letters as the decision of the Board itself, supplemented by the discussion below.

DISCUSSION

Compliance with Requirements for Filing Appeal

Pursuant to PERB Regulation 32635(a),² an appeal from dismissal must:

- (1) State the specific issues of procedure, fact, law or rationale to which the appeal is taken;
- (2) Identify the page or part of the dismissal to which each appeal is taken;
- (3) State the grounds for each issue stated.

To satisfy the requirements of PERB Regulation 32635(a), the appeal must sufficiently place the Board and the respondent “on notice of the issues raised on appeal.” (*State Employees Trades Council United (Ventura, et al.)* (2009) PERB Decision No. 2069-H (*State Employees Trades Council*); *City & County of San Francisco* (2009) PERB Decision No. 2075-M.) An appeal that does not reference the substance of the Board agent’s dismissal fails to comply with PERB Regulation 32635(a). (*United Teachers of Los Angeles (Pratt)* (2009) PERB Order No. Ad-381 (*Pratt*); *Lodi Education Association (Hudock)* (1995) PERB Decision No. 1124; *United Teachers - Los Angeles (Glickberg)* (1990) PERB Decision No. 846.) Likewise, an appeal that merely reiterates facts alleged in the unfair practice charge does not comply with PERB Regulation 32635(a). (*Pratt*; *State Employees Trades Council*; *Contra Costa County Health Services Department* (2005) PERB Decision No. 1752-M; *County of Solano (Human Resources Department)* (2004) PERB Decision No. 1598-M.)

² PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

The appeal in this case merely restates facts alleged in the original charge that the Association failed to adequately represent Stever concerning her grievances filed against the District. It fails, however, to reference any portion of the Board agent's determination or otherwise identify the specific issues of procedure, fact, law or rationale to which the appeal is taken, the page or part of the dismissal to which appeal is taken, or the grounds for each issue. Thus, it is subject to dismissal on that basis. (*City of Brea* (2009) PERB Decision No. 2083-M.)

New Evidence and Allegations on Appeal

In her appeal, Stever presents new factual allegations that were not presented in the original charge or the amended charge. "Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence." (PERB Reg. 32635(b); see also *CSU Employees Union, SEIU Local 2579 (Kyrias)* (2011) PERB Decision No. 2175-H.) The Board has found good cause when "the information provided could not have been obtained through reasonable diligence prior to the Board agent's dismissal of the charge." (*Sacramento City Teachers Association (Ferreira)* (2002) PERB Decision No. 1503.)

On June 19, 2012, the Board agent issued a letter advising Stever that the charge failed to state a prima facie case and warning her that the charge would be dismissed unless she amended the charge by June 29, 2012, to state a prima facie case. On June 25, 2012, Stever filed an amended charge. Thereafter, on July 24, 2012, the Board agent dismissed Stever's charge. Stever filed an appeal from the dismissal on August 20, 2012. The appeal includes new factual allegations and evidence provided for the first time on appeal that all predate the dismissal letter, including documents dated June 15, June 27, June 29 and July 16, 2012. The appeal provides no reason why they could not have been alleged in the original charge, the amended charge, or in a subsequent amended charge. Thus, we do not find good cause to consider these new allegations.

ORDER

The unfair practice charge in Case No. LA-CO-1517-E is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Chair Martinez and Member Huguenin joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



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July 24, 2012

Mary Stever

Re: *Mary Stever v. Palos Verdes Faculty Association*
Unfair Practice Charge No. LA-CO-1517-E
DISMISSAL LETTER

Dear Ms. Stever:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on April 12, 2012 and amended on June 25, 2012 (First Amended Charge). Mary Stever (Charging Party) alleges that the Palos Verdes Faculty Association (Association or Respondent) violated the Educational Employment Relations Act (EERA or Act)¹ by breaching its duty of fair representation.

Charging Party was informed in the attached Warning Letter dated June 19, 2012 (Warning Letter), that the above-referenced charge did not state a prima facie case. Charging Party was advised that, if there were any factual inaccuracies or additional facts that would correct the deficiencies explained in that letter, she should amend the charge. Charging Party was further advised that, unless she amended the charge to state a prima facie case or withdrew it on or before June 29, 2012, the charge would be dismissed. On June 25, 2012, this office received the First Amended Charge.

Facts as Amended

Sandra Goins is the Executive Director of South Bay United Teachers. Ms. Goins is also an Association representative. Kathy Santarosa is the Association's President. Charging Party is a Special Education Teacher employed by the Palos Verdes Unified School District (District).

In August 2011, Charging Party filed a grievance alleging that the District involuntarily transferred her in violation of the collective bargaining agreement (CBA). Ms. Goins represented Charging Party at the grievance meeting and also proposed to the District a written resolution. The District denied the grievance and did not offer a counterproposal. Ms. Goins continued to represent Charging Party at additional grievance meetings in December 2011 with the District. The parties did not reach an agreement and the grievance currently remains unresolved.

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

In December 2011, Charging Party filed a second grievance against the District alleging that the District changed her evaluation forms in violation of the CBA. Ms. Goins represented Charging Party at successive steps in the grievance process including making proposed written offers to the District. However, in March 2012, the parties were unable to resolve the grievance.

On June 13, 2012, Ms. Stever, Ms. Goins and Ms. Santarosa attended a mediation session with District representatives. During the mediation, Ms. Santarosa advised Charging Party to take an early retirement incentive to resolve the grievance. Ms. Santarosa informed her that this was a "good deal" and encouraged her to accept the offer. After considering the offer, Charging Party refused and informed Ms. Goins and Ms. Santarosa that she "would not negotiate with snakes." After exhausting mediation, the District and Ms. Stever did not reach an agreement to resolve the grievances.

Discussion

Charging Party asserts that the Ms. Santarosa "breached her union duty of fair representation by her continued display of outrageous conduct which was arbitrary, discriminatory and in bad faith."

The attached Warning Letter explained in detail why the above-referenced charge did not initially state a prima facie case. The Warning Letter included an explanation of the pleading burden that a charging party must satisfy in order to have a complaint issue and set forth criteria for establishing a prima facie breach of the duty of fair representation allegation.

Charging Party was informed that in order to state a prima facie breach of the duty of fair representation, Charging Party must show through allegations of specific facts that the Respondent's conduct was arbitrary, discriminatory or in bad faith. (*Fremont Teachers Association (King)* (1980) PERB Decision No. 125; *United Teachers of Los Angeles (Collins)* (1982) PERB Decision No. 258.) Mere legal conclusions are not sufficient to state a prima facie case. (*Charter Oak Unified School District* (1991) PERB Decision No. 873.)

Facts show that the Association's representative, Ms. Goins, represented Ms. Stever in two separate grievance matters and during a mediation session with the goal to resolve both of Charging Party's grievances. Additionally, Ms. Santarosa was also present during the mediation session to offer her representation. In particular, Ms. Santarosa advised Charging Party to accept an early retirement because she believed it was a "good deal." Nothing in the charge suggests that Ms. Santarosa's conduct was arbitrary, discriminatory, or in bad faith. Accordingly, the charge does not establish a prima facie violation.

Conclusion

Therefore, the charge is hereby dismissed based on the facts and reasons set forth in this and the June 19, 2012 Warning Letter.

Right to Appeal

Pursuant to PERB Regulations,² Charging Party 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. (Cal. Code Regs., tit. 8, § 32635, subd. (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 during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered “filed” when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of PERB 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. (Cal. Code Regs., tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

The Board’s address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(916) 322-8231
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. (Cal. Code Regs., tit. 8, § 32635, subd. (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 Cal. Code Regs., tit. 8, § 32140 for the required contents.) The document will be considered properly “served” when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, § 32135, subd. (c).)

² PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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. (Cal. Code Regs., tit. 8, § 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,

M. SUZANNE MURPHY
General Counsel

By _____
Yaron Partovi
Regional Attorney

Attachment

cc: Kathy Santarosa Miraleste

PUBLIC EMPLOYMENT RELATIONS BOARD



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June 19, 2012

Mary Stever

Re: *Mary Stever v. Palos Verdes Faculty Association*
Unfair Practice Charge No. LA-CO-1517-E
WARNING LETTER

Dear Ms. Stever:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on April 12, 2012. Mary Stever (Charging Party) alleges that the Palos Verdes Faculty Association (Association or Respondent) violated the Educational Employment Relations Act (EERA or Act)¹ by breaching its duty of fair representation.

Investigation of the charge revealed the following relevant information. The Association is the exclusive representative of certificated employees of the Palos Verdes Unified School District (District). The District and the Association are parties to a collective bargaining agreement (CBA). Charging Party is a Special Education teacher employed by the District.

Grievance Regarding Involuntary Transfer

The charge provides a timeline of events relating to a grievance Charging Party filed with the District on August 17, 2011, alleging that the District violated the CBA by transferring her from Palos Verdes High School to Point Vicente Elementary School. Facts show that the Association's representative, Sandra Goins, attended a grievance meeting with Charging Party on September 9, 2011 and proposed to the District a written resolution. The District denied the grievance and did not provide a counter offer to the Association's resolution. Ms. Stever alleges facts showing that her fourth-level grievance was not resolved in December 2011.

On December 13, 2011, Ms. Goins met with the District's Superintendent and made another written proposal. On December 20, 2011, the District sent Ms. Stever an e-mail message that included a document attachment. Since Ms. Stever could not open the attachment, she asked Ms. Goins for assistance, but was informed that Ms. Goins was on vacation until January 3, 2012.

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

Grievance Regarding Ms. Stever's Evaluation

In early December 2011, Ms. Stever filed a grievance alleging that the District "unilaterally changed [her] evaluation forms and process" in violation of the CBA. Ms. Goins and Charging Party attended a second-level grievance meeting on January 10, 2012. The District denied the second-level grievance. On January 23, 2012, Ms. Stever filed a third-level grievance. On February 2, 2012, Ms. Goins and Ms. Stever met with the District's Superintendent to discuss resolving all grievances filed since August 18, 2011. Later that day (February 2, 2012), Ms. Goins and Ms. Stever also met with other District representatives concerning Ms. Stever's evaluation. On February 14, 2012, the District provided a response to the third-level grievance. Ms. Stever was not satisfied with the response and on February 20, 2012 made a "proposed resolution" to the District. The District denied that there were any contract violations and, by March 21, 2012, the District and Charging Party were unable to resolve the grievance.

Discussion

Charging Party has alleged that the exclusive representative denied Charging Party the right to fair representation guaranteed by EERA section 3544.9 and thereby violated section 3543.6(b). The duty of fair representation imposed on the exclusive representative extends to grievance handling. (*Fremont Unified District Teachers Association, CTA/NEA (King)* (1980) PERB Decision No. 125; *United Teachers of Los Angeles (Collins)* (1982) PERB Decision No. 258.) In order to state a prima facie violation of this section of EERA, Charging Party must show that the Respondent's conduct was arbitrary, discriminatory, or in bad faith. In *United Teachers of Los Angeles (Collins)*, the Public Employment Relations Board stated:

Absent bad faith, discrimination, or arbitrary conduct, mere negligence or poor judgment in handling a grievance does not constitute a breach of the union's duty. [Citations omitted.]

A union may exercise its discretion to determine how far to pursue a grievance in the employee's behalf as long as it does not arbitrarily ignore a meritorious grievance or process a grievance in a perfunctory fashion. A union is also not required to process an employee's grievance if the chances for success are minimal. [Citations omitted.]

In order to state a prima facie case of arbitrary conduct violating the duty of fair representation, a Charging Party:

must at a minimum include an assertion of sufficient facts from which it becomes apparent how or in what manner the exclusive representative's action or inaction was without a rational basis or devoid of honest judgment.

(*Reed District Teachers Association, CTA/NEA (Reyes)* (1983) PERB Decision No. 332, p. 9, quoting *Rocklin Teachers Professional Association (Romero)* (1980) PERB Decision No. 124; emphasis in original.)

With regard to when “mere negligence” might constitute arbitrary conduct, the Board observed in *Coalition of University Employees (Buxton)* (2003) PERB Decision No. 1517-H that, under federal precedent, a union’s negligence breaches the duty of fair representation “to cases in which the individual interest at stake is strong and the union’s failure to perform a ministerial act completely extinguishes the employee’s right to pursue his claim.” (Quoting *Dutrisac v. Caterpillar Tractor Co.* (9th Cir. 1983) 749 F.2d 1270, at p. 1274; see also *Robesky v. Quantas Empire Airways, Ltd.* (9th Cir. 1978) 573 F.2d 1082.)

Additionally, PERB Regulation 32615(a)(5)² requires, inter alia, that an unfair practice charge include a “clear and concise statement of the facts and conduct alleged to constitute an unfair practice.” The charging party may do so by alleging the “who, what, when, where and how” of an unfair practice. (*State of California (Department of Food and Agriculture)* (1994) PERB Decision No. 1071-S, citing *United Teachers-Los Angeles (Ragsdale)* (1992) PERB Decision No. 944.) Mere legal conclusions are not sufficient to state a prima facie case. (*Ibid.*; *Charter Oak Unified School District* (1991) PERB Decision No. 873.)

As presently written, nothing in the charge demonstrates how the Association’s alleged conduct was arbitrary, discriminatory, or in bad faith, and thus does not establish a prima facie violation. Indeed, the facts show that Ms. Goins attended the grievance meetings with Ms. Stever and made proposals to the District to resolve the underlying disputes in Ms. Stever’s grievances regarding alleged CBA violations. To the extent Charging Party alleges that the Association breached its duty of fair representation by failing to pursue her grievances, the Board has held that a union has the discretion whether or not to pursue a grievance. (*United Teachers of Los Angeles (Thomas)* (2010) PERB Decision No. 2150.) Refusal to pursue a grievance the union believes is unmeritorious is not a violation, as long as the refusal is not arbitrary, discriminatory, or in bad faith. (*Ibid.*) It is the charging party’s burden to allege facts which demonstrate that the refusal was arbitrary, discriminatory, or in bad faith. (*Ibid.*) Where charging party failed to do so, the charge failed to establish a prima facie case for breach of the duty of fair representation. (*Ibid.*) Regardless, as previously stated, nothing in the charge demonstrates how the Association’s alleged conduct was arbitrary, discriminatory, or in bad faith, and thus the charge does not establish a prima facie violation.³

² PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

³ Additionally, PERB Regulation 32615(a)(8) requires that the charge contain “[a] statement of the remedy sought by the charging party.” The original charge fails to provide a statement of the requested remedy. Charging Party should correct this deficiency should she wish to file an amended charge.

Conclusion

For these reasons the charge, as presently written, does not state a prima facie case.⁴ If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, Charging Party may 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 an authorized agent of 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 an amended charge or withdrawal is not filed on or before June 29, 2012,⁵ PERB will dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Yaron Partovi
Regional Attorney

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⁴ In *Eastside Union School District* (1984) PERB Decision No. 466, the Board explained that a prima facie case is established where the Board agent is able to make "a determination that the facts as alleged in the charge state a legal cause of action and that the charging party is capable of providing admissible evidence in support of the allegations. Consequently, where the investigation results in receipt of conflicting allegations of fact or contrary theories of law, fair proceedings, if not due process, demand that a complaint be issued and the matter be sent to formal hearing." (*Ibid.*)

⁵ A document is "filed" on the date the document is **actually received** by PERB, including if transmitted via facsimile. (PERB Regulation 32135.)