

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



JAMES C. BRAMELL, )  
 )  
Charging Party, ) Case No. SF-CO-190  
 )  
v. ) PERB Decision No. 430  
 )  
SAN FRANCISCO CLASSROOM TEACHERS ) November 13, 1984  
ASSOCIATION, CTA/NEA, )  
 )  
Respondent. )  
\_\_\_\_\_ )

Appearances; James C. Bramell, in his own behalf;  
Priscilla Winslow, Attorney for San Francisco Classroom  
Teachers Association, CTA/NEA.

Before Tovar, Morgenstern and Burt, Members.

DECISION

TOVAR, Member: James C. Bramell appeals the dismissal by a regional attorney of the Public Employment Relations Board of his charge that the San Francisco Classroom Teachers Association, CTA/NEA (Association), breached its duty of fair representation. For the reasons which follow, we reverse the regional attorney's determination and remand the case to the general counsel for further proceedings.

THE CHARGE

On April 13, 1983, Bramell filed an unfair practice charge against the Association alleging violations of subsections 3543.6(a) and (b) and section 3544.9 of the Educational

Employment Relations Act (EERA).<sup>1</sup> The facts alleged in support of his charge are as follows.

Bramell was discharged from his employment as an athletic coach by school principal Phillip Lum on January 4, 1982. He contacted the Association, which filed a grievance on his behalf challenging the dismissal. A representative of the Association accompanied Bramell at the first step of the grievance procedure, which consisted of a meeting between the grievant and the school principal. At the conclusion of this meeting, Bramell spoke with the Association representative. He expressed his belief that Principal Lum would not reverse his decision and requested that, upon receipt of Lum's official

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<sup>1</sup>The EERA is codified at Government Code section 3540 et seq. Section 3543.6 provides in relevant part as follows:

It shall be unlawful for an employee organization to:

- (a) Cause or attempt to cause a public school employer to violate Section 3543.5.
- (b) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

Subsection 3544.9 provides as follows:

The employee organization recognized or certified as the exclusive representative for the purpose of meeting and negotiating shall fairly represent each and every employee in the appropriate unit.

written response, the Association should appeal to the second level of the grievance procedure.

Upon receiving his copy of Lum's official denial of his level one grievance, Bramell contacted the Association to inquire into the status of its efforts to appeal his case to the second level of the grievance procedure. He was informed that no such efforts had been made. The Association representative apologized for his failure to act on the request Bramell had made at the close of the level one grievance meeting and said that, because of the imminently approaching deadline, he would request an extension of time from the District in which to pursue the grievance at the second level. This conversation occurred four days before the December 3 deadline for filing as provided in the grievance procedure. Despite this promise, the Association failed to request or obtain the extension. Allegedly in an effort to cover up its failure, the Association wrote to Bramell on January 18, 1983 stating that the grievance would not be pursued further because it lacked merit.

Upon receipt of the Association's letter, Bramell contacted the Association, objecting strenuously to its failure to assist him. He subsequently met with three Association representatives, explaining the basis for his contention that the District had violated the contract in removing him from his position.

On January 28, the Association wrote to the District objecting to the manner in which the District hired a replacement coach to fill the position from which Bramell had been discharged. The letter stated the Association's belief that the procedure used by the District violated their collective bargaining agreement, and suggested that, pursuant to that agreement, Bramell should have the position. The letter did not, however, initiate a grievance.

The Association contends that it first learned of Bramell's desire to have his grievance taken to the second step of the procedure four days before the deadline for that action. It maintains that it did in fact seek and obtain an extension of this deadline from the District to January 28, 1983. It asserts that it considered Bramell's grievance to be of doubtful merit from the outset and that Bramell failed to disclose to the Association any information indicating that his termination was the result of protected activity or was otherwise discriminatory. The Association explains that it did not file a grievance in connection with the procedure used by the District in selecting Bramell's replacement because Bramell never requested that it do so and because it believed that, even if the District were forced to reverse its hiring of Bramell's replacement, this would not have restored Bramell to the position.

## DISCUSSION

An exclusive representative violates its duty of fair representation when its conduct towards a member of the bargaining unit is arbitrary, discriminatory or in bad faith. Rocklin Teachers Professional Association (Romero) (3/26/80) PERB Decision No. 124, citing Vaca v. Sipes (1967) 386 U.S. 171 [64 LRRM 2369].

In Wright v. Interstate & Ocean Transportation (4th Cir. 1980) 623 F.2d 888 [104 LRRM 2408], the court explained the union's duty to avoid arbitrary conduct in representing bargaining unit members:

To sustain a member's action against his union . . . it is not necessary that the union's breach be intentional. A union representative could be so indifferent to the rights of members or so grossly deficient in his conduct purporting to protect the rights of members that the conduct could be equated with arbitrary action. (Citations omitted.)

Significantly, the court's conclusion was that, while the distinction is "in the final analysis, a determination of law, underlying questions usually depend on jury findings of fact . . . ." Thus, the court reversed the summary judgment entered below, finding that the employee was entitled to a hearing on his claim that the union's failure to prosecute his grievance was arbitrary.

In Miller v. Gateway Transportation (CA 7, 1980) 616 F.2d 272 [103 LRRM 2591], the court found that an employee had

stated a prima facie case where the charge stated that the union had made virtually no effort to prosecute a grievance on behalf of a discharged employee and where the union offered no explanation.

In Ruzicka v. General Motors Corp. (CA 6, 1975), 523 F.2d 306 [90 LRRM 2497], the court found a breach of the duty of fair representation where, just as in the instant case, the union in effect abandoned a grievance - and the grievant - when it failed to either file an appeal to the next grievance step or request an extension of time.

In the instant case Local 166 officials discussed Appellant's grievance among themselves and with GM personnel, but inexplicably neglected to take Appellant's grievance to the third step of processing by not filing a Statement of Unadjusted Grievance with the appropriate GM official. Having sought and been granted two extensions of time to file the Statement and at no time having decided that Appellant's claim was without merit, the Local allowed the final deadline to pass without filing the Statement or requesting a further extension. At this point the Local did not inform either Appellant or GM that it had decided either to continue or to stop processing Appellant's grievance. Such negligent handling of the grievance, unrelated as it was to the merits of Appellant's case, amounts to unfair representation. It is a clear example of arbitrary and perfunctory handling of a grievance.

In accordance with the guidance provided by these federal cases, this Board has described the elements of the prima facie case necessary to show that an exclusive representative's

conduct was arbitrary and thus in violation of the duty of fair representation. In Reed District Teachers Association (Reyes) (8/15/83) PERB Decision No. 332, the Board stated that:

A prima facie case alleging arbitrary conduct violative of the duty of fair representation 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. [Citing Rocklin Teachers Professional Association, supra; emphasis in the original.]

Here, Bramell alleges that, after being represented by the Association through the first step of the grievance procedure, he told the Association that he desired to pursue the matter to the second level. Although the Association took no action in response to that request, no breach of the duty of fair representation is described merely by declining to proceed or by negligently forgetting to file a timely appeal. However, the charge further alleges that when Bramell contacted the Association to inquire into the state of its efforts on his behalf, he received, in addition to an apology for the Association representative's failure to act on Bramell's instructions, an assurance that the Association would seek an extension of time. Without explanation, the Association failed to do this, and the December 3 deadline passed. Not until January 18, substantially after these events had transpired, did the Association issue a letter purporting to inform Bramell

of its opinion that his grievance lacked merit. Bramell alleges that this explanation from the Association was offered pretextually in an effort to hide its failure to act as promised, and the lengthy delay in issuance of the letter is a factor which inferentially supports Bramell's allegation. Further, when the Association learned of the hiring of a new employee in Bramell's old position, it apparently felt that the procedure used by the District in hiring that employee was sufficiently improper to warrant writing a letter of protest. Nevertheless, it filed no formal grievance asking that the position be vacated, as Bramell desired. The Association offers by way of explanation the claim that it didn't know Bramell wanted such a grievance filed and, further, that the mere vacating of the position would not guarantee that the District would then select Bramell as the one to refill it. In light of the repeated and energetic requests for Association assistance made by Bramell in this, a discharge case, the Association's claim that it was unaware that Bramell wanted the position vacated suffers from questionable credibility. So, too, while the vacating of the position would apparently not necessarily result in the return of Bramell to the position, we note that the vacating of the position was certainly one prerequisite for that result.

The regional attorney examined each alleged act of the Association in isolation. He found, and we would agree, that

any one of these actions, by itself, would not breach the Association's duty. The regional attorney, however, failed to consider these actions cumulatively. We find that, in their totality, the Association's actions present a pattern demonstrating, at a minimum, an arbitrary failure to fairly represent Bramell in his employment relationship with the District.

The Association, we note, disputes this version of the facts, maintaining, inter alia, that it did in fact seek an extension of time as promised and that it considered the grievance to lack merit from the outset. Of course, the resolution of such factual disputes is precisely the function of a hearing, and it is therefore to a hearing we direct the parties.

#### ORDER

The dismissal of this charge is REVERSED and the case REMANDED to the General Counsel for proceedings consistent with this Decision.

Members Morgenstern and Burt joined in this Decision.