

9 PERC ¶ 16006

CSEA CHAPTER 318 (HARMENING)

California Public Employment Relations Board

William E. Harmening, Charging Party, v. California School Employees Association, Chapter 318, Respondent.

Docket No. S-CO-110

Order No. 442

November 29, 1984

Before Hesse, Chairperson; Jaeger and Morgenstern, Members*

Duty Of Fair Representation -- Union's Internal Affairs -- Recall Of Elected Union Officer -- 22.52, 23.4, 73.113 Union's conducting recall election to remove union officer was internal union affair and did not implicate its duty of fair representation.

APPEARANCE:

Mocine, Plotz & Eggleston by Mary H. Mocine, Attorney for William E. Harmening.

DECISION

This case is before the Public Employment Relations Board on an appeal by William E. Harmening of the Board agent's dismissal, attached hereto, of his charge alleging that the California School Employees Association, Chapter 318 violated sections 3543.6(b) and 3543 of the Educational Employment Relations Act (Government Code section 3540 et seq.).

We have reviewed the dismissal and, finding it free from prejudicial error,¹ adopt it as the Decision of the Board itself.

ORDER

The unfair practice charge in Case No. S-CO-110 is DISMISSED WITHOUT LEAVE TO AMEND.

¹ The regional attorney's dismissal letter erroneously states that the charging party alleged violations of section 3543.6(a) and (c). No such charges were made.

* Members Tovar and Burt did not participate in this Decision.

REGIONAL ATTORNEY'S DECISION

Pursuant to Public Employment Relations Board (PERB) Regulation section 32620(5), a complaint will not be issued in the above-referenced case and the pending charge is hereby dismissed because it fails to allege facts sufficient to state a prima facie violation of the Educational Employment Relations Act (EERA).¹ The reasoning which underlies this decision follows.

On June 7, 1984, William E. Harmening, charging party, filed an unfair practice charge against the California School Employees Association Chapter 318 (Association) alleging violation of EERA section 3543.6(b). More specifically, charging party alleged that on March 28, 1984 he

was recalled from his position as president of the Association's Stockton chapter, that the procedure followed was rife with defects, and that the result was unfair because at least 25 nonmembers voted at the meeting.

Examination and investigation of the above-referenced charge revealed the following. Charging party was elected president of the Association's Stockton chapter on November 30, 1983. On March 26, 1984, at approximately 3:00 p.m., charging party was notified of an intent on the part of certain Association members to hold a recall election two days later at the next regularly scheduled chapter meeting. On March 27, 1984, notice of the recall election was distributed among classified employees. Charging party contends that the notice was not distributed to all employees. On March 28, 1984, the regularly-scheduled meeting was opened by charging party as president. The Association asserts that approximately 165 employees were present when charging party was elected president, and approximately 177 unit members attended the recall meeting. The recall procedure was initiated and the accusations against the charging party were read. Charging party stated that he had not been provided sufficient time within which to prepare a response and that he would prefer to respond in writing. He then agreed to answer orally each of the separate charges against him. A voice vote was held, and it was concluded, by a representative of state CSEA who was conducting the meeting, that more than the required three-fourths of the members present had voted in favor of the recall.

Harmening's wife (also an employee) challenged the results on the ground that more than 25 voters were not members of the Association. A committee was formed to investigate that allegation, and ultimately the approximately 25 nonmembers were given an opportunity to become members that evening. There is no indication that such persons paid the initiation fee and regular dues which Charging Party asserts to be a precondition of membership under Article 2, section 1 of the chapter's constitution and bylaws (see Exh. "A").

Charging party has alleged that the Association denied him the right to fair representation guaranteed by section 3544.9, and thereby violated sections 3543.6(a) and (c). The fair representation duty imposed on the exclusive representative extends to contract negotiations (*Redlands Teachers Association (Faeth)* (9/24/78) PERB Decision No. 72; *SEIU, Local 99 (Kimmitt)* (10/19/79) PERB Decision No. 106; *Rocklin Teachers Professional Association (Romero)* (3/26/80) PERB Decision No. 124; *El Centro Elementary Teachers Association (Willis)* (8/11/82) PERB Decision No. 232); contract administration (*Castro Valley Teachers Association (McElwain)* (12/17/80) PERB Decision No. 149; *SEIU Local 99 (Pottorff)* (3/30/82) PERB Decision No. 203, and to grievance handling (*Fremont Teachers Association (King)* (4/21/80) PERB Decision No. 125; *United Teachers of Los Angeles (Collins)* (11/17/83) PERB Decision No. 258). PERB has ruled that a prima facie statement of such a violation requires allegations that: (1) the acts complained of were undertaken by the organization in its capacity as the exclusive representative of all unit employees; and (2) the representational conduct was arbitrary, discriminatory, or in bad faith.

The duty to represent employees fairly is not applicable to activities which are strictly internal union matters:

Only such activities that have a substantial impact on the relationships of unit members to their employers are subject to that duty. (*Kimmitt, supra*, at p. 8.)

PERB has refused to review procedural objections to internal union elections. In *Kimmitt, supra*, the Board stated:

[T]he election to select a representative to the negotiating team is not subject to the duty of fair representation. The negotiating team must represent all employees in the unit fairly, but that obligation does not entail the selection of negotiators in any particular manner. (*SEIU, Local 99 Kimmitt, supra*, at p. 12.)

PERB explained its rationale as follows:

The internal organization structure could be scrutinized as could the conduct of elections for union officers to ensure conformance with an idealized participatory standard. However laudable such a result might be, the Board finds such intervention in union affairs to be beyond the legislative intent in enacting the EERA. (*SEIU, Local 99 Kimmett, supra*, at p. 16.)

While elections or recall of union officers may not implicate the duty of fair representation, organizational discipline of members may violate the duty under limited circumstances. The Board did not intend in *Kimmett* "to abdicate [its] jurisdictional power to determine whether an employee organization has exceeded its authority under subsection 3543.1(a) to dismiss or otherwise discipline its members." (*California School Employees Association and its Shasta College Chapter #381 (Parisot) (1/31/83) PERB Decision No. 280*, at p. 11.) Rather, an organization's failure to have reasonable provisions governing discipline of members, or its failure to abide by them, may violate the duty in light of the statutory prescription enabling employee organizations to "make *reasonable* provisions for the dismissal of individuals from membership" (see subsection 3543.1(a)).

In the instant case, the incident complained of concerns a recall election of a union officer. It does not appear that the recall election procedures, on their face, or as applied, constitute disciplinary measures or that, as a result of the recall, Charging Party's membership was impaired by suspension, fine, decree of ineligibility for state or chapter office, or any other disqualification. (Cf. *Parisot, supra*.) Further, no information has been presented which suggests that the recall was initiated and/or implemented by the statewide organization or that state policy No. 613 (discipline of members) was invoked (Exhs. "B" and "C").

Anomalously, CSEA argues that the actions taken against Harmening *can* be construed as essentially disciplinary in nature. This argument does not appear to be valid. The procedure set forth in Article III, section 5 of the constitution of the Stockton School Employees chapter 318, followed during the recall of Charging Party, is not on its face disciplinary in nature (Exh. "A"). Nor does it appear that the procedure was applied as a disciplinary measure in this instance. It is true that some or all of the voters may have voted in favor of the recall because charging party was involved in a decertification campaign against the Association prior to becoming president. That decertification campaign conduct was the basis of one of several charges lodged against him. The likelihood that some voters sought charging party's recall on that basis, however, does not change the election into a disciplinary proceeding against charging party by the local and/or statewide organization.

For the foregoing reasons, the *Parisot* rules does not extend to the facts involved in this case. Nor does it appear that any other legal theory exists in support of the charge. The charge fails to state a prima facie violation of EERA section 3543.6(b). The allegations are dismissed and no complaint will issue thereon.

Pursuant to Public Employment Relations Board regulation section 32635 (California Administrative Code, title 8, part III), you may appeal the refusal to issue a complaint (dismissal) to the board itself.

1 References to the EERA are to Government Code sections 3540 et seq. PERB Regulations are codified at California Administrative Code, Title 8.

