STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

JOHN LAGOS, Charging Party, v. MODESTO TEACHERS ASSOCIATION, Respondent.	Case No. S-CO-132 PERB Decision No. 576 June 25, 1986

Appearance: Panos Lagos, Attorney for John Lagos.

Before Hesse, Chairperson; Morgenstern, Burt, Porter and Craib, Members.

DECISION

This case is before the Public Employment Relations Board (Board) on appeal by Charging Party of the Board agent's dismissal, attached hereto, of his charge alleging that the Modesto Teachers Association violated sections 3543.6(b) and 3544.9 of the Educational Employment Relations Act (Gov. Code sec. 3540 et seq.).

We have reviewed the dismissal and, finding it free from prejudicial error, adopt it as the decision of the Board itself, in that, as indicated in the Board agent's letter, the charge failed to state a prima facie case.

ORDER

The unfair practice charge in Case No. S-CO-132 is DISMISSED WITHOUT LEAVE TO AMEND.

By the BOARD.

STATE Of CALIFORNIA

GEORGE DEUKMEJIAN, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD
SACRAMENTO REGIONAL OFFICE
1031 18th STREET, SUITE 102
SACRAMENTO. CALIFORNIA 93814
(916) 323-3198

April 8, 1986

Panos Lagos. Esq.

Re: John Lagos v. Modesto Teachers Association
Unfair Practice Charge No. S-CO-132

Dear Mr. Lagos:

The above-referenced charge alleges that the Modesto Teachers Association (Association) failed to adequately represent Mr. Lagos by refusing to proceed to arbitration with his grievance. This conduct is alleged to violate sections 3543.6(b) and 3544.9 of the Educational Employment Relations Act (EERA).

I indicated to you in my attached letter dated March 28, 1986 that the above-referenced charge did not state a prima facie case. You were advised that if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you 6hould amend the charge accordingly. You were further advised that unless you amended the charge to state a prima facie case, or withdrew them prior to April 4. 1986. it would be dismissed.

I have not received either a request for withdrawal or an amended charge and am therefore dismissing the charge based on the facts and reasons contained in my March 28 letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, you 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 (California Administrative Code, title 8. section 32635(a)). To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) on April 28. 1986. or sent by telegraph, certified or Express United States mail postmarked not later than April 28. 1986 (section 32135). The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

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 calendar days following the date of service of the appeal (section 32635(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 section 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

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 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 (section 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,

JEFFREY SLOAN
Acting General Counsel

By _____
Robert Thompson
Regional Attorney

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STATE OF CALIFORNIA GEORGE DEUKMEJIAN, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD
SACRAMENTO REGIONAL OFFICE
1031 18TH STREET. SUITE 103
SACRAMENTO. CALIFORNIA 95814
(916) 323-3198

Match 28. 1986

Panos Lagos. Esq.

Re: John Lagos v. Modesto Teachers Association
Unfair Practice Charge No. S-CO-132

Dear Mr. Lagos:

The above-referenced charge alleges that the Modesto Teachers Association (Association) failed to adequately represent Mr. Lagos by refusing to proceed to arbitration with his grievance. This conduct is alleged to violate sections 3543.6(b) and 3544.9 of the Educational Employment Relations Act (EERA).

My investigation revealed the following facts. From 1978 through 1983 Mr. Lagos was the head varsity baseball coach at Downey High School in the Modesto City School District. In school year 1983-84 Mr. Lagos went on a leave of absence and Ron Vermeulen replaced him as baseball coach. When he returned in school year 1984-85 Mr. Lagos learned that Mr. Vermeulen had been recommended rather than himself to be the baseball coach. After filing a complaint with the District Mr. Lagos was chosen to be the baseball coach for that school year. On October 2. 1984, Mr. Vermeulen with the assistance of the Association filed a grievance over this matter (grievance #216-84). On November 14. 1984. Mr. Lagos requested the Association to intervene in the arbitration on his behalf. On November 28. 1984. the Association denied this request and stated that the question of Mr. Lagos's intervention 6hould be left to the arbitrator. After a request for reconsideration the Association notified Mr. Lagos by letter of February 19. 1985. that they would not represent him in his motion to intervene but would provide representation if the motion was granted. On February 20. 1985. the arbitration was held. The arbitrator ruled that Mr. Lagos could not intervene and ruled against Mr. Vermeulen in the arbitration.

During December 1984 Mr. Lagos filed a grievance alleging discrimination and harassment by the District in that he was denied his eighth period PE class to prepare for the baseball season (grievance #227-84). In January 1985 an Association

representative wrote a letter to the board in support of Mr. Lagos' grievance.

On June 16. 1985, Mr. Lago6 was removed from his coaching position. He then filed a grievance (#236-85) alleging that loss of the coaching position violated various sections of the collective bargaining agreement between the Association and the District. On November 12. 1985. the Association grievance committee determined that this grievance would not proceed to arbitration for the following reasons: (1) Article 3. section g, paragraph 8 of the collective bargaining agreement states in pertinent part: "The Association agrees not to support a grievance essentially similar to one denied by an arbitrator." The Association believes that this grievance is essentially similar to Mr. Vermeulen's grievance and thus pursuing it to arbitration would violate this provision of the collective bargaining agreement; (2) the arbitrator in the Vermeulen grievance noted that the collective bargaining agreement does not cover the manner for selecting or dismissing the baseball coach; (3) the arbitrator in the Vermeulen grievance seemed to indicate that the board of education is within its right6 to appoint baseball coaches on a year-to-year basis; (4) there are no facts which indicate that the District acted in a discriminatory, inconsistent, or arbitrary manner in dealing with Mr. Lagos's nonappointment to the baseball coach position. On appeal to the Association board of directors, Mr. Lago6' request for arbitration was denied on November 13. 1985.

Based on the facts described above, this charge fails to state a prima facie violation of the EERA for the reasons which follow.

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 EERA 3543.6(b). The duty of fair representation imposed on the exclusive representative extends to grievance handling. Fremont Teachers Association (King) (1980) PERB Decision No. 125; United Teachers of Los Angeles (Collins) (1983) PERB Decision No. 258. In order to state a prima facie violation of this section of the EERA Charging Party must show that the Association's conduct was arbitrary, discriminatory, or in bad faith. In United Teachers of Los Angeles (Collins). Id.. the Public Employment Relations Board (PERB) 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.
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> . . . . . .
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> 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 changes for success are minimal.

In order to state a prima facie case alleging arbitrary conduct violative of the duty of fair representation the 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 rationale basis or devoid of honest judgment. Reed District Teachers Association. CTA/NEA (Reyes) (1983) PERB Decision No. 332. citing Rocklin Teachers Professional Association (Romero) (1980) PERB Decision No. 124.

Charging Party asserts that the failure of the Association to pursue Mr. Lagos' grievance is arbitrary because the Association had previously pursued a similar grievance filed by Mr. Vermeulen. This rationale, however, does not demonstrate that the Association has acted in a manner contrary to the EERA. To the contrary, the Association appears bound by its contractual obligation not to pursue similar grievances where the arbitrator has ruled against the Association. In addition, it is reasonable that the Association would not wish to pursue a similar grievance to Mr. Vermeulen's after they had lost Mr. Vermeulen's grievance in arbitration. Thus, the charge does not state a prima facie violation of the Association's duty of fair representation.

For these reasons, charge number S-CO-132, as presently written, does not state a prima facie case. If you feel that

there are any factual inaccuracies in this letter or any additional facts which would correct the deficiencies explained above, please amend the charge accordingly. 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 6igned under penalty of perjury by the charging party. The amended charge must be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before April 4. 1986. I shall dismiss your charge. If you have any questions on how to proceed, please call me at (916) 322-3198.

Sincerely.

Robert Thompson
Regional Attorney

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