

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



GLADYS M. BRACEY,)	
)	
Charging Party,)	Case No. LA-CO-365
)	
v.)	PERB Decision No. 616
)	
UNITED TEACHERS LOS ANGELES,)	March 27, 1987
)	
Respondent.)	

Appearance: Gladys M. Bracey, on her own behalf.

Before Hesse, Chairperson; Porter and Craib, Members.

DECISION AND ORDER

This case is before the Public Employment Relations Board (Board) on appeal by charging party of the Board agent's dismissal, attached hereto, of her charge alleging that the United Teachers-Los Angeles violated the Educational Employment Relations Act sections 3543.6(a), (b), (c), and (d). We have reviewed the dismissal and adopt it as the Decision of the Board itself.

The unfair practice charge in Case No. LA-CO-365 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

By the BOARD.

PUBLIC EMPLOYMENT RELATIONS BOARD

SACRAMENTO REGIONAL OFFICE
1031 18TH STREET, SUITE 102
SACRAMENTO, CALIFORNIA 95814
322-3198



September 30, 1986

Gladys M. Bracey

BE: Gladys M. Bracey v. United Teachers - Los Angeles,
Case No. LA-C0-365, First Amended Charge, Dismissal

Dear Ms. Bracey:

The above-referenced charge, as well as the First Amended Charge, alleges that the United Teachers - Los Angeles (UTLA) failed to represent you in several matters pertaining to your employment with the Los Angeles Unified School District (District). This conduct is alleged to violate Government Code sections 3543.6(a), (b), (c) and (d) of the Educational Employment Relations Act (EERA).

In a letter dated July 17, 1986, Regional Attorney Barbara Stuart indicated to you that the original 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 the letter, you should amend the charge accordingly. You were further advised that unless you amended the charge to state a prima facie case, or withdrew it prior to July 24, 1986, it would be dismissed. On July 25, 1986, not having heard from you, Ms. Stuart dismissed the charge. However, that dismissal was set aside on July 28, 1986 upon your request to Ms. Stuart, who gave you until August 6, 1986 to file an amendment.

This office received a First Amended Charge on August 6, 1986, reiterating these allegations which were also contained in the original charge: (1) in January 1985, UTLA representative Roger Segure failed to honor a request that he come to Widney High School where Charging Party worked to provide assistance in a meeting involving teleclass teachers, (2) in April 16, 1985 Segure filed a grievance on Charging Party's behalf to compel the District to conform to the requirements of Education Code Section 44942 but did not give Charging Party a copy of that statute until June 20, 1985 after Charging Party made several requests, (3) on or about mid-October 1985, Charging Party contacted Segure twice to inquire why her pay check did not contain full pay and he refused to talk to her and told her to talk to UTLA's attorney Lawrence B. Trygstad, and (4) on or about April 2, 1986, Charging Party contacted another UTLA attorney, Richard J. Schwab, regarding her pay and he "never called back . . . and

Gladys M. Bracey
September 30, 1986
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failed to let me know that I could file an appeal within six month [sic]. No new information regarding these original four allegations have been provided in the First Amendment.

The First Amended Charge adds that: (5) you were "assaulted again" because you filed charges with the State Compensation Board and (6) your medical records have been changed. No further information is provided concerning these allegations.

With respect to the first four allegations, the First Amended Charge does not provide any further information to correct the deficiencies explained in Ms. Stuart's letter to you of July 17, 1986. Therefore, that portion of the charge must be dismissed.

Moreover, the First Amendment fails to provide sufficient further information to present a prima facie case of an EERA violation in the two new allegations. Section 32615(a)(5) of PERB's regulations provides that a charge must contain:

A clear and concise statement of the facts and conduct alleged to constitute an unfair practice.

The First Amendment fails to provide fundamental information concerning who is allegedly responsible for the assault and the change in your medical records and when these events allegedly occurred. From the total context of the original charge, the supporting exhibits and the First Amendment, it appears that both the alleged assault conduct and the change of medical records are attributable to the District or its agents--and not to UTLA.

For these reasons and for the reasons explained in Ms. Stuart's July 17 letter, First Amended Charge No. LA-CO-363 is dismissed.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, you may obtain a review of this partial 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.) or sent by telegraph, certified or Express United States mail postmarked not later than the last day set for filing (section 32135). Code of Civil Procedure section 1013 shall apply. The Board's address is:

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

Gladys M. Bracey
September 30, 1986
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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
General Counsel

By: _____
Jorge Jorge Leon
Regional Attorney

Attachment

cc: Helena Sunny Wise, Esq.

PUBLIC EMPLOYMENT RELATIONS BOARD

LOS ANGELES REGIONAL OFFICE

3470 WILSHIRE BLVD., SUITE 1001

LOS ANGELES, CALIFORNIA 90010

(213) 726-3127



July 25, 1986

Gladys M. Bracey
3840 Virginia Road
Los Angeles, CA 90008

Re: LA-CO-365, Gladys M. Bracey v.
United Teachers - Los Angeles
DISMISSAL OF UNFAIR PRACTICE CHARGE

Dear Ms. Bracey:

The above-referenced charge alleges that the United Teachers - Los Angeles (UILA) failed to fairly represent you in several matters pertaining to your employment with the Los Angeles Unified School District (District). This conduct is alleged to violate Government Code sections 3543.6 (a), (b), (c) and (d) of the Educational Employment Relations Act (EERA).

I indicated to you in my attached letter dated July 17, 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 should amend the charge accordingly. You were further advised that unless you amended the charge to state a prima facie case, or withdrew it prior to July 24, 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 July 17, 1986 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 August 14, 1986, or sent by telegraph, certified or Express United States mail postmarked not later than August 14, 1986 (section 32135). The Board's address is:

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

July 25, 1986
DISMISSAL OF UPC
LA-CO-355
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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
General Counsel

By Barbara T. Stuart
Barbara T. Stuart
Regional Attorney

BTS:eb

Attachment

cc: Helena Sunny Wise, Esq.

PUBLIC EMPLOYMENT RELATIONS BOARD

LOS ANGELES REGIONAL OFFICE
3450 Wilshire Blvd., Suite 1001
Los Angeles, CALIFORNIA 90010
(213)736-3127



July 17, 1986

Gladys M. Bracey

Re: LA-CO-355, Gladys M. Bracey v. United Teachers -
Los Angeles

Dear Ms. Bracey:

The above-referenced charge alleges that the United Teachers - Los Angeles (UILA) failed to fairly represent you in several matters pertaining to your employment with the Los Angeles Unified School District (District). This conduct is alleged to violate Government Code sections 3543.6 (a), (b), (c) and (d) of the Educational Employment Relations Act (EERA).

As background, it is noted that a complaint and partial dismissal of an unfair practice charge issued on May 1, 1986 in a related case against the District. Gladys M. Bracey v. Los Angeles Unified School District, LA-CE-2307. The partial dismissal was appealed to the Board. The complaint alleged that the District placed Charging Party on unpaid mandatory sick leave for a two year period pursuant to Education Code section 44942 because of her alleged protected activities.¹

¹Education Code section 44942 provides in pertinent part:

Suspension or transfer of certificated employees on ground of mental illness: Psychiatric examination: Mandatory sick leave. (a) Any certificated employee may be suspended or transferred to other duties by the governing board if the board has reasonable cause to believe that the employee is suffering from mental illness of such a degree as to render him incompetent to perform his duties.

(b) The governing board shall forthwith, upon any suspension or transfer hereunder, give to the employee a written statement of the facts giving rise to the board's belief, and an opportunity to appear before the board within 10 days to explain or refute the charges.

(c) If, after the employee's appearance before the board, the board decides to continue the suspension or transfer, or if the employee chooses not to appear before the board, the employee shall then be offered, in writing, the opportunity of being examined by a panel of three psychiatrists selected by him from

The partial dismissal explained that the Public Employment Relations Board (PERB) does not have jurisdiction to remedy alleged noncompliance with Education Code provisions.

The current charge alleges that (1) in January 1985, UTLA representative Roger Segure failed to come to Widney High School where Charging Party worked to provide assistance in a

a list of psychiatrists to be provided by the board. To assist the panel in making their determination, the governing board shall supply to the panel, prior to the date scheduled for the psychiatric examination, a list of the duties of the position from which the employee was suspended or transferred. The employee shall continue to receive his regular salary and all other benefits of employment during the period dating from his suspension to the filing of the report of the panel with the governing board.

(d) The psychiatric examination shall be conducted at school district expense within 15 days of any suspension or transfer ordered hereunder. The employee shall submit to the examination, but shall be entitled to be represented by a psychiatrist or physician of his own choice, and any report of the psychiatrist or physician selected by him shall be filed with the panel at the request of the employee.

A written report of the panel on the examination of the suspended or transferred employee shall be submitted to the governing board within 10 days after completion of the examination. A copy shall be supplied to the employee upon request. The report shall contain a finding on whether the employee is suffering from mental illness of such a degree as to render him incompetent to perform his duties.

(e) If a majority of the panel conclude that the employee should be permitted to return to his duties, no written record of the suspension or of the determination of the panel shall be retained, and in all respects any written record concerning the employee shall appear as it did before the suspension was made.

(f) If a majority of the panel find in their report that the employee is suffering from mental illness of such a degree as to render him incompetent to perform his duties, the governing board may, upon receipt of the report, place the employee on mandatory sick leave of absence. Any mandatory sick leave of absence imposed under this section shall not exceed two years, during which period the employee shall be entitled to sick leave, hospital and medical benefits which he accrued during his employment by the governing board but only to the extent of such accrual. . . .

meeting involving teleclsss teachers, (2) in April 16, 1985 Segure filed a grievance on Charging Party's behalf to compel the District to conform to the requirements of section 44942 but did not give Charging Party a copy of that statute until June 20, 1935 after Charging Party made several requests, (3) on or about mid-October 1985, Charging Party contacted Segure twice to inquire why her pay check did not contain full pay and he refused to talk to her and told her to talk to UTLA's attorney Lawrence B. Trygstad, and (4) on or about April 2, 1986, Charging Party contacted another UTLA attorney, **Richard J. Schwab**, regarding her pay and he "never called back . . . and failed to let me know that **I could file** an appeal **within** six month [sic]."

Statute of Limitations

Government Code section 3541.5(a) provides that PERB "shall not . . . issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." See also San Dieguito Union High School District (1982) PERB Decision No. 184. The charge in this case was filed on April 30, 1986. The six-month limitations period began on October 30, 1985. Therefore, the first three matters mentioned above cannot be the basis of a complaint and will be dismissed.

Representation on Section 44942 Matter

Regarding the fourth matter mentioned above, my investigation revealed the following background history and facts. In approximately early April 1985 the District attempted to dismiss Charging Party from employment as a teacher without following Education Code section 44942. Charging Party went to UTLA for representation and UTLA representative Roger Segure filed a grievance on her behalf to compel the District to follow correct procedures under section 44942.

On or about May 27, 1985, the police delivered to Charging Party's husband at her home a letter dated May 20, 1985 which read:

Dear Ms. Bracey:

As set forth in the letter to you dated May 13, 1985, the Board of Education has voted to suspend you from service until completion of the procedure set forth in Education Code section 44942.

This is to confirm that the aforementioned letter advised you of an examination that has been scheduled for you at 1:00 p.m. on Tuesday, May 28, 1985 at the medical offices located at 610 S. Euclid Avenue, Pasadena, California 91106.

As you were informed in the letter of May 13, the Education Code provides that the examination is to be conducted by three (3) psychiatrists selected by you from the following list:

1. R. Sloan, M.D.
2. R. Burgoyne, M.D.
3. Barry Kramer, M.D.
4. Tim Bottelo, M.D.
5. Javad Razani, M.D.

It is important that you contact me by May 23, 1985 to indicate the doctors you have selected. My telephone number is (213) 625-6245, and my mailing address is 450 North Grand Avenue, Los Angeles, California 90012.

Very truly yours,

Robert Witter, Director
Employee Services Section
Personnel Division

Charging Party did not contact Witter or otherwise respond to the letter. Subsequently she received from the District three paychecks which she describes as "half pay."

The District states that the checks were payment for **690 hours** of accrued sick leave. The District placed Charging Party on unpaid mandatory sick leave effective June 4, 1985 for a **two.** year period ending June 3, 1987. This was done when she failed to submit to the psychiatric evaluation pursuant to Education Code section 44942.

On June 12, 1985, Segure sent a letter to Witter advising him to send all communication regarding Charging Party's case to UTLA attorney Lawrence B. Trygstad "who will represent Ms. Bracey in all matters pertaining to Education Code 44942." Charging Party received a copy of this letter.

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On July 3, 1985, attorney Richard J. Schwab of Trygstad's office sent a letter to Witter asking him to provide "an update concerning the status of this matter." Charging Party received a copy of this letter.

On or about July 24, 1985 Charging Party received the following letter from Trygstad:

Dear Ms. Bracey:

As you are aware Mr. Roger Segure, Director, Grievance Processing at UTLA has referred your grievance to this office. In turn, Richard J. Schwab, an attorney who also has expertise in education matters, has been assigned and is familiar with your case. Additionally Mr. Schwab has litigating experience and has handled many cases similar to your present one.

Accordingly please contact Mr. Schwab at your earliest convenience in order that he may immediately proceed with your representation. Mr. Roger Segure is aware and confers [sic] that Mr. Schwab is the appropriate attorney to assist you throughout this matter.

Very truly yours,

LAWRENCE B. TRYGSTAD
Attorney at Law

Charging Party did not contact Schwab because she wished to be represented by Trygstad because of prior experiences with UTLA.

On August 8, 1985, Schwab mailed Charging Party the following letter which she does not recall receiving:

Dear Ms. Bracey:

In that I have been unable to contact you by telephone, please call my office in order that we can prepare for your case.

I look forward to hearing from you in the near future.

Very truly yours,

RICHARD J. SCHWAB

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On or about September 23, 1985, Schwab mailed Charging Party the following letter which she also does not recall receiving:

Dear Ms. Bracey:

This is a follow-up to our letter of August 8, 1985. Since we have been unable to contact you by telephone, please call our office in order that we can prepare for your case.

As you are aware, UTLA has authorized this firm to assist and oversee that the District takes the appropriate steps to comply with Education Code Section 44942 regarding your leave.

Unless we otherwise hear from you, it will be our assumption that you do not desire the assistance of our office concerning the above matter.

I look forward to hearing from you in the very near future.

Very truly yours,

RICHARD J. SCHWAB
Attorney at Law

In September 1985 Charging Party called UTLA's legal office and requested that Trygstad represent her, but was advised that she must work with Schwab. She declined to do so.

All of the foregoing events occurred prior to the six-month statutory limitations period. From October 30, 1985 until April 1986, Charging Party states that she did not call Schwab because she did not want his representation and Schwab did not call her.

Then, on or about April 2, 1986, Charging Party did call Schwab because the District advised her that it would no longer pay for her health benefits. Schwab then wrote a letter on April 3, 1986 to Witter asking for an update concerning the status of Charging Party's case. She received a copy of this letter. On April 21, 1986 Witter advised that Charging Party remained on mandatory sick leave pursuant to section 44942 because the District had not received a response to its May 20, 1985 letter quoted above.

On or about April 22, 1986 Charging Party received from Schwab a letter advising her of various legal options available to her including an appeal under section 44942, a one-time request for illness benefits under the collective bargaining agreement between the District and UTLA, and service retirement with insurance benefits. She did not respond to this letter and on May 15, 1986, Schwab sent her another letter requesting that she call his office to discuss the options. She did contact Schwab at this time and requested him to seek the one-time contractual illness benefits. He did so by a letter dated May 19, 1986 to Witter on her behalf.

Charging Party's now remains on mandatory sick leave. She states that she will continue to refuse to submit to the psychiatric examination mandated by section 44942 because it is an invasion of her right to privacy. She requests reinstatement to her teaching position as a remedy in this matter.

Government Code section 3544.9 provides:

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.

The duty of fair representation extends to contract negotiations and contract administration, including grievance handling. SEIU, Local 99 (Kimmett) (1979) PERB Decision No. 106; El Centro Elementary Teachers Association (Willis) (1982) PERB Decision No. 232; United Teachers of Los Angeles (Collins) (1983) PERB Decision No. 258. As to matters which do not involve the employer or which are strictly internal union matters, only those activities that have a substantial impact on the relationship of unit members to their employer are subject to the duty of fair representation. SEIU, Local 99 (Kimmett), supra; El Centro Elementary Teachers Association (Willis), supra; Fontana Teachers Association (1984) PERB Decision No. 416. A charging party must demonstrate that the employee organization acted arbitrarily, discriminatorily or in bad faith. Fremont Unified School District Teachers Association (King) (1980) PERB Decision No. 125. To show 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 rational basis or devoid of honest judgment." Reed District Teachers Association, CTA/NEA (Reyes) (1983) PERB Decision No. 332. Mere negligence or poor judgment in the

handling of a matter does not constitute a breach of the duty of fair representation. United Teachers of Los Angeles (Collins), supra.

Under these standards, it is found that Charging Party has failed to allege a prima facie case that UTLA breached its duty of fair representation. Based on the facts recited above, there is no evidence of arbitrary, discriminatory or bad faith conduct on the part of UTLA and its attorney within the statutory six-month period. In his September 23, 1985 letter, Schwab informed Charging Party that she must contact him or he would assume that she did not wish representation on the section 44942 matter. Having written that letter following the July 24 and August 8, 1985 letters, Schwab reasonably assumed she did not wish to pursue the matter.

Charging Party states that she did not wish representation from Schwab and for that reason did not contact him herself until April 1986. Charging Party is thus essentially alleging that UTLA violated its duty of fair representation toward her by failing to provide her with the attorney of her choice. However, this is an internal union matter. Further an employee organization's denial of a member's request for a particular attorney, without more, does not establish arbitrary, discriminatory or bad faith conduct on the part of the employee organization.

The undisputed facts indicate that when Charging Party finally did contact Schwab in April 1986 he immediately reopened her case, advised the District, and notified her of the available legal options including an appeal under section 44942. Charging Party continues to seek reinstatement to her teaching position without submitting to the examination procedures set forth in section 44942. However, the District has the right to require this examination. Charging Party has not established a prima facie case that UTLA failed to fairly represent her in this matter.

Alleged Violations of Sections 3543.5(a), (c) and (d)

Failure of the duty of fair representation would involve a violation of section 3543.5(b). Charging Party has additionally alleged violations of sections 3543.5(a), (c) and (d). These sections provide:

It shall be unlawful for an employee organization to:

- (a) Cause or attempt to cause a public school employer to violate Section 3543.5.

.

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(c) Refuse or fail to meet and negotiate in good faith with a public school employer of any of the employees of which it is the exclusive representative.

(d) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548) .

None of the facts alleged in the charge or learned during the investigation of the charge are relevant to violations of these sections. Therefore, the allegations that UTLA violated sections 3543.5(a), (c) and (d) will be dismissed.

Opportunity to Amend

For these reasons, the charge 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 signed 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 July 24, 1986, I shall dismiss your charge. If you have any questions on how to proceed, please call me at (213) 736-3127."

Sincerely,

Barbara T. Stuart
Regional Attorney