STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ANNETTE M. DEGLOW,	)	
Charging Party,	)	Case No. S-CO-260
v.	)	PERB Decision No. 896
LOS RIOS COLLEGE FEDERATION OF TEACHERS, CFT/AFT, Local 2279,	)	August 14, 1991
Respondent.	)	

Appearances: Annette M. Deglow, on her own behalf; Robert J. Bezemek, Attorney, for Los Rios College Federation of Teachers, CFT/AFT, Local 2279.

Before Hesse, Chairperson; Shank and Carlyle, Members.

DECISION AND ORDER

HESSE, Chairperson: This case is before the Public Employment Relations Board (Board) on appeal by Annette M. Deglow of a Board agent's dismissal (attached hereto) of her charge that the Los Rios College Federation of Teachers, CFT/AFT, Local 2279 (Federation) violated section 3543.6(b) of the Educational Employment Relations Act (EERA)[1] and violated its duty of fair representation under section 3544.9 of the EERA, as enforced under section 3543.6(b). We have reviewed the dismissal and, finding it to be free of prejudicial error, adopt it as the decision of the Board itself.

Further, the Board denies the Federation's request for attorneys' fees and costs on appeal. As the factual allegations

[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

in the original and amended unfair practice charges allege the type of conduct involved in Chaffey Joint Union High School District (1988) PERB Decision No. 669[2], the Board finds that the allegations are not without arguable merit. (See Unit Determination for the State of California (1980) PERB Decision No. 110c-S; Chula Vista City School District (1982) PERB Decision No. 256; Central Union High School District (1983) PERB Decision No. 324; Modesto City and High School Districts (1986) PERB Decision No. 566.)

The unfair practice charge in Case No. S-CO-260 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Shank and Carlyle joined in this Decision.

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[2]In Chaffey Union High School District, the Board determined that the exclusive representative's removal of election notices, its assent to a consent election agreement containing limited polling hours and locations, as well as its selective notification only of those unit members believed to approve of agency fee, when considered in the totality of the circumstances, was sufficient to state a prima facie case of the breach of the duty of fair representation. Here, Deglow alleges the Federation failed to notify all of the bargaining unit members of an upcoming agency fee election.

STATE OF CALIFORNIA PETE WILSON, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916) 322-3198

May 30, 1991

Annette Deglow

Re: Annette Deglow v. Los Rios College Federation of Teachers/CFT/AFT (Local 2279)
Unfair Practice Charge No. S-CO-260
DISMISSAL LETTER

Dear Ms. Deglow:

The above-referenced charge alleges that the Los Rios College Federation of Teachers, Local 2279 (Federation), by failing to provide equal notice of an agency fee election to all bargaining unit members interfered with the rights of bargaining unit members in violation of Government Code section 3543.6(b) (EERA) and violated its duty of fair representation under section 3544.9 of the EERA, as enforced under section 3543.6(b).

I indicated to you in my attached letter dated April 25, 1991, 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 that 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 May 2, 1991, the charge would be dismissed.

On May 1, 1991, you requested and were granted an extension of time to file an amended charge. On May 13, 1991, you filed a Second Amended Charge. Your Second Amended Charge contained the following additional information:

> The Sacramento City College campus meeting held on or about May 23, 1990, was conducted primarily by Kenneth Lynch, the Chief Negotiator for the Federation, but Federation President Michael Crowley and Federation Executive Director Dick Hemann were also in attendance.

> When it was time to review the organization security/fair share provision of the contract a number of unit members in attendance, myself included, raised our hands to ask question [sic]. The first individual seeking information was told that the specifics regarding the organizational security/fair share provision were not available but that prior to that vote, there would be numerous flyers and mailings regarding the . . . organizational security/fair share issue. The phrasing of the Federation's answer to the first question asked was such that all other individuals including myself were led to believe that answers to our questions were being deferred until a later date when the Federation would provide the details of the contract provision through numerous flyers and other written materials.
>
> The Federation, by deferring our questions to a later date with the promise of providing "numerous flyers and mailings regarding the . . .organizational security/fair share vote" prior to the vote, was in fact entering into an oral contract specifically with those of us seeking additional information as well as all other unit members. Failure to provide at a minimum, two flyers, two mailings or a combination of the two prior to the vote equates to a failure to complete the oral contract with the specific unit members (self included) seeking additional information and with all the unit members in general.
>
> Considering the obvious financial advantage for the Federation if the vote were in favor of organizational security/fair share, it is more likely that the "inaction" of the Federation leadership was part of a calculated scheme to minimize the risk of failure rather than a simple oversight. As such, the "inaction" falls in the category of "arbitrary and without a rational basis or devoid of honest judgment" and constitutes a breach of the duty of fair representation. This was not simple negligence; it was election tampering.

> The Chief Negotiator for the Federation, Lynch voluntarily entered into an oral contract with all unit members when he stated that there would be "numerous flyers and mailing regarding the organizational security/fair share vote" in exchange for terminating dialog [sic] at the May 23, 1990 meeting with unit members.
>
> As the exclusive agent, the Federation represents all unit members. It has a fiduciary obligation to insure equal awareness of the basic information necessary to insure equal access and opportunity to the voting process. Considering the oral contract with the unit members and the fact that the Federation is the exclusive representative, it had a duty (fiduciary obligation) to provide advance notice of times, dates and locations for the election to all of its unit members. Failure to provide such notice to all unit members equates to negligence but when the Federation chose to notify its members and not the non-members, the Federation's action or "inaction" transformed from simple negligence to gross negligence.

Based on the allegations set forth above and the reasons contained in this letter and my letter of April 25, 1991, I find that your allegations fail to state a prima facie case.

The allegations contained in your Second Amended Charge contend that the Federation failed to comply with the oral contract entered into by Chief Negotiator Lynch and unit members during the May 23, 1991 meeting. Assuming the oral contract between Federation Chief Negotiator Lynch and unit members is a valid contract, under Government Code section 3541.5(b) the Public Employment Relations Board "shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of such an agreement that would not also constitute an unfair practice under this chapter." Since you have failed to allege an independent theory for an unfair practice, a complaint cannot issue merely to require compliance with the oral contract. (See, Los Angeles Unified school District (1984) PERB Decision No. 448; Regents of the University of California (1990) PERB Decision No. 849-H.

As I informed you in my warning letter of April 25, 1991, the EERA does not impose upon employee organizations the affirmative duty to publicize agency fee elections to all bargaining unit members. Chaffey Joint Union High School District (1988) PERB Decision No. 669. The allegations contained in your amended charge fail to demonstrate how the Federation's failure to provide notice to all bargaining unit members rises to the level of conduct found to state a prima facie case of interference in Chaffey, supra. Furthermore, your Second Amended Charge also fails to allege facts which show arbitrary, discriminatory, or bad faith conduct by the Federation to establish a prima facie violation of the duty of fair representation. Therefore, for the reasons contained in this letter and my letter of April 25, 1991, your charge is dismissed

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 Code of Regulations, 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 no later than the last date set for filing (California Administrative Code, title 8, 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

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 (California Code of Regulations, title 8, 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 California Code of Regulations, title 8, 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 (California Code of Regulations, title 8, 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,

JOHN W. SPITTLER
General Counsel

By

Regional Attorney

MEG:djt
Attachment

cc: Michael J. Crowley
Los Rios College POT, Local 2279

STATE Of CALIFORNIA PETE WILSON, *Governor*

PUBLIC EMPLOYMENT RELATIONS BOARD

Headquarters Office
1031 18th Street
Sacramento, CA 95814-4174
(916) 322-3088

April 25, 1991

Annette Deglow

Re: Annette Deglow v. Los Rios College Federation of Teachers. Local 2279
Unfair Practice Charge No. S-CO-260
WARNING LETTER

Dear Ms. Deglow:

On March 18, 1991, you filed a charge in which you alleged that the Los Rios College Federation of Teachers, Local 2279 (Federation), by failing to provide equal notice of an agency fee election to all bargaining unit members, interfered with the rights of bargaining unit members in violation of Government Code section 3543.6(b) (EERA) and violated its duty of fair representation under section 3544.9 of the EERA, as enforced under section 3543.6(b). Specifically, you allege that the Federation, by issuing a memorandum on October 5, 1990, providing notice of an agency fee election to some bargaining unit members and not all bargaining unit members, interfered with the rights of bargaining unit members and breached its duty of fair representation.

My investigation revealed the following facts.

Charging Party is a regular instructor in the Los Rios Community College District (District) and has been employed by the District since 1962. Charging Party is currently a member of the certificated employee bargaining unit exclusively represented by the Federation. There is in place a contract between the District and the Federation which expires on June 30, 1993.

During May, 1990, the Federation scheduled and held campus meetings to summarize the tentative agreement for the 1990-93 contract. All unit members were invited to the information meetings but those attending were informed that only Federation members were eligible to vote on ratification of all contract provisions.

During our telephone conversation of March 28, 1991, you informed me that during this meeting a Federation representative, in response to a question raised about the organizational security election, looked in your direction and stated that all unit members would vote on the organizational security/fair share provision of the contract and prior to that vote, there would be numerous flyers and mailings regarding the times, dates and conditions.

Prior to October 16, 1990, Charging Party made at least two inquiries to the Public Employment Relations Board (PERB) seeking the election date and was informed that PERB had no knowledge or information regarding an organizational security/fair share vote for the District certificated employees.

The election was conducted by the State Conciliation Service (SCS). Notices for the election were first posted by the SCS on or about Monday, October 15, 1990.

On or about October 16, 1990, Charging Party learned that notices had been posted at American River College (ARC) regarding the organizational security/fair share election.

The following day, Wednesday, October 17, 1990, between 10:00 a.m. and 12 noon, a similar notice appeared on the wall above the campus mail boxes in the mail room at Sacramento City College (SCC). No notice was posted at the front of the boxes. Thursday, October 18, 1990, and Friday, October 19, 1990, were scheduled District non-teaching "Flex" days and many of the administrative and department offices including the SCC campus mail room were closed to all faculty until the following Monday, October 22, 1990.

Following the posting of the notice in the mail room, Charging Party found in her campus mail box a flyer from Norman Barth. In his flyer Mr Barth referenced a mailing by the Federation dated October 5, 1990, to its members. The October 5, 1990, memorandum stated that the election would be held at four different sites between October 22, 1990, and October 25, 1990, and provided the times for the election.

Based on the facts set forth above, I do not find that you have established a prima facie violation of either section 3544.9 of the EERA as enforced under section 3543.6(b), or section 3543.6(b) under a theory of interference.

Charging Party has alleged that the exclusive representative by failing to provide equal notice of an agency fee election to all bargaining unit members denied Charging Party the right to fair representation guaranteed by EERA section 3544.9 and thereby violated section EERA 3543.6(b). 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 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, citing Rocklin Teachers Professional Association (Romero) (1980) PERB Decision No. 124.

Your charge alleges that since the Federation "provided advance notice of times, dates and locations for the fair share election to its members, it had a fiduciary obligation to provide similar advance notice . . . for the fair share election to the remaining unit members." The EERA does not impose upon employee organizations the affirmative duty to publicize agency fee elections to all bargaining unit members. (See Chaffey Joint Union High School District (1988) PERB Decision No. 669. Although your charge alleges that the Federation during May, 1990, "assured all unit members of prior notice and numerous flyers and mailings regarding the . . . organizational security/fair share vote," and a Federation representative at the May, 1990, meeting looked in your direction and stated that prior to the vote there would be numerous flyers and mailings regarding the election. This comment alone does not impose a duty upon the Federation to provide notice to all bargaining unit members.

This election was conducted by the SCS. Notices were first posted by the SCS on or about October 15, 1990. The election was held at four different sites during various times. You have not established that the Federation's conduct was part of a comprehensive plan to exclude teachers from participating in the election, nor have you demonstrated that the Federation engaged in any other conduct to prevent bargaining unit members from participating in this election. Therefore, considering your allegations under a totality of the circumstances analysis, your

charge fails to establish a prima facie violation of EERA section 3544.9, as enforced under section 3543.6(b). (See Chaffey supra.) In addition, you have failed to demonstrate how the Federation's failure to provide notice to all bargaining unit members rises to the level of conduct found to state a prima facie case of interference in Chaffey, supra.

For these reasons, the charge as presently written does not state a prima facie case. If there are any factual inaccuracies in this letter or any additional facts that 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 must 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 May 2, 1991, I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198.

Sincerely,

MICHAEL E. GASH
Regional Attorney

MEG:djt

cc: Michael J. Crowley
Los Rios College FOT