



STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD

ANNETTE M. DEGLOW,	)	
	)	
Charging Party,	)	Case No. S-CO-261
	)	
v.	)	PERB Decision No. 897
	)	
LOS RIOS COLLEGE FEDERATION OF	)	August 29,, 1991
TEACHERS/CFT/AFT/Local 2279,	)	
	)	
Respondent.	)	
_____	)	
CHARLES A. NELSON,	)	
	)	
Charging Party,	)	Case No. S-CO-262
	)	
v.	)	
	)	
LOS RIOS COLLEGE FEDERATION OF	)	
TEACHERS/CFT/AFT/Local 2279,	)	
	)	
Respondent.	)	
_____	)	
MICHAEL A. SYAS,	)	
	)	
Charging Party,	)	Case No. S-CO-263
	)	
v.	)	
	)	
LOS RIOS COLLEGE FEDERATION OF	)	
TEACHERS/CFT/AFT/Local 2279,	)	
	)	
Respondent.	)	
_____	)	
RONALD M. CHARLES, SR.,	)	
	)	
Charging Party,	)	Case No. S-CO-264
	)	
v.	)	
	)	
LOS RIOS COLLEGE FEDERATION OF	)	
TEACHERS/CFT/AFT/Local 2279,	)	
	)	
Respondent.	)	
_____	)	

Appearances: Annette M. Deglow, Charles A. Nelson, Michael A. Syas, and Ronald M. Charles, Sr., on their 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, Charles A. Nelson, Michael A. Syas, and Ronald M. Charles, Sr., of a Board agent's dismissals (attached hereto) of their charge that the Los Rios College Federation of Teachers/ CFT/AFT/Local 2279 violated section 3543.6(b) of the Educational Employment Relations Act (EERA)<sup>1</sup> 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 dismissals and, finding them to be free of prejudicial error, adopt them as the decision of the Board itself.<sup>2</sup>

Members Shank and Carlyle joined in this Decision.

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<sup>1</sup>EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

<sup>2</sup>The charging parties urge consolidation of their four separate unfair practice charges in this single appeal. Because the allegations in the charges are identical, and the charging parties are similarly situated, the Board finds consolidation to be appropriate. (See Chaffey Joint Union High School District (1988) PERB Decision No. 669.) Additionally, the warning and dismissal letters are substantially identical.

## PUBLIC EMPLOYMENT RELATIONS BOARD



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



July 1, 1991

Annette DeGlow

**RE:** DeGlow v. Los Rios College Federation of Teachers. CFT, AFT.  
Local 2279  
Unfair Practice Charge No. S-CO-261, First Amended Charge  
**DISMISSAL OF CHARGE**

Dear **Ms. DeGlow:** \_\_\_\_\_

The above-referenced charge alleges that the **Los Rios College Federation of Teachers, CFT, AFT, Local 2279 (Federation)** discriminated against non-federation unit members and breached its duty of fair representation to these individuals by **failing to return their fair share fees. 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 June 7, 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 June 14, 1991, the charge would be dismissed.

On June 11, 1991, you requested and received an extension of time to file an amended charge. The amended charge was filed on June 26, 1991 and contains the same information provided in the original charge with the following additional material. On November 30, 1990, the Federation sent a memo to all fair share fee payers. This memo contained the following statement ". . . you are required as a condition of employment, either to join AFT Local 2279 and pay union dues, or pay a service fee as described herein . . . ." The amended charge alleges that this statement is a grossly negligent, arbitrary and devoid of honest judgement misrepresentation and as such violates the duty of fair representation. The charge asserts that such knowing misrepresentations constitute a violation of the duty of fair

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representation under California State Employees' Association  
(O'Connell) (1986) PERB Decision No. 596-H [11 PERC Par. 18010].<sup>1</sup>

The additional information provided in the amended charge and summarized above is insufficient to state a prima facie violation of the EERA for the reasons contained in my June 7, 1991 letter and the following.

The Federation's November 30 memo coupled with its subsequent decision to return agency fees to Ms. Ono does not support the legal conclusion that the Federation knowingly misrepresented facts to bargaining unit members. The theory apparently is that the Federation knew on November 30 when it issued the memo that the statement concerning the agency fee requirement was false. There is no evidence supporting this assertion. In fact, the Federation's decision to return Ms. Ono's fees probably would not have been made until after Ms. Ono filed her objection to the fee on December 28, 1990.

Finally, these facts do not support the finding of a prima facie violation of the statute based on O'Connell. That case stands for the proposition that "...a prima facie case of a breach of the duty of fair representation has been stated where it is alleged that the exclusive representative knowingly misrepresented a fact in order to secure from its constituents their ratification of a contract." The alleged misrepresentation presented here does not relate to ratification of any contract. Rather, it is essentially a statement of law indicating a nonmembers' obligation to pay an agency fee where such has been properly negotiated between the Federation and the employer. Thus, there is no prima facie case based on the O'Connell ruling.

#### 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 Regs., tit. 8, sec. 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

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<sup>1</sup>This case was incorrectly cited in the amended charge as PERB Decision No. 916-H [11 PERC Par. 18070].

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the last date set for filing (California Code of Regs., tit. 8, sec. 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 Regs., tit. 8, sec. 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 Regs., tit. 8, sec. 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 Regs., tit. 8, sec. 32132).

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July 1, 1991

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 \_\_\_\_\_  
Robert Thompson  
Deputy General Counsel

cc: Michael J. Crowley

Attachment

## PUBLIC EMPLOYMENT RELATIONS BOARD



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



June 7, 1991

Annette DeGlow

RE: DeGlow v. Los Rios College Federation of Teachers. CFT. AFT.  
Local 2279  
Unfair Practice Charge No. S-CO-261  
WARNING LETTER

Dear Ms. DeGlow:

The above-referenced charge alleges that the Los Rios College Federation of Teachers, CFT, AFT, Local 2279 (Federation) discriminated against non-federation unit members and breached it's duty of fair representation to these individuals by failing to return their fair share fees. 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 information. The Federation and the Los Rios Community College District (District) are parties to a collective bargaining agreement covering the certificated bargaining unit which expires on June 30, 1993. As a part of that bargaining unit, you voted in October 1990 in an election in which the majority ratified the fair share agreement provisions of this contract. On November 30, 1990, the Federation wrote to all fair share fee payers informing them of their rights and providing them a breakdown of total union expenses including a description of the union expenses which are non-chargeable to agency fee payers. The letter also stated that fee payers wishing to object to and/or challenge the Federation's determination of the chargeable percentage must file a written objection within 30 days from the date of the notice. The challenge procedure ends in an arbitration before a neutral from the American Arbitration Association.

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In December 1990, unit member Marian Ono filed a challenge to the union's determination of the agency fee. The Federation commenced collection of the fair share fee with the January 1991 pay period.

In a May 3, 1991 letter, the Federation informed Ms. Ono that the arbitration scheduled to hear her challenge had been cancelled and that her agency fees, with interest, were being returned to her. In addition, the letter stated that she was being refunded \$63.68 for agency fees to be collected in May and June. The letter continued that her money was being refunded to avoid the "enormous expense involved arbitrating challenges to the fee."<sup>1</sup> At this time, it is unknown whether the other three employees who objected to the agency fee also received their money back. Ms. Ono is presently asking the American Arbitration Association whether the arbitration is going to be rescheduled.

The charge alleges that the Federation violated the EERA by returning fair share fees to unit member Ono without extending this opportunity to all other fair share fee payers in the bargaining unit. Based on these facts, this charge does not 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 primarily to grievance handling and contract negotiations. Fremont Teachers Association (King)

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<sup>1</sup> It appears from the correspondence provided that the decision to refund Ms. Ono's agency fees was based on an economic determination made by the Federation. Namely, it would cost the Federation less money to return Ms. Ono's fees than it would to conduct an arbitration over her objection to the fees. The Federation apparently relies on a reading of agency fee law, including Chicago Teachers' Association v. Hudson, (1986) 475 U.S. 292. Hudson sets out specific procedures which are designed to protect the First Amendment rights of agency fee payers. These procedures are designed to prevent an exclusive representative's wrongful use of agency fees. Thus, the Federation would argue, where an employee has no agency fees deducted from their paycheck, these procedural rights do not apply and there is no need for an agency fee arbitration.

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(1980) PERB Decision No. 125; United Teachers of Los Angeles (Collins) (1983) PERB Decision No. 258; Rocklin Teachers Prof. Association (Romero) (1980) PERB Decision No. 124. The Board has determined that the duty of fair representation does not apply to internal union activities that do not have a **substantial impact** on the relationships of unit members to their employers. Service Employees International Union. Local 99 (1979) PERB Decision No. 106. The decision to refund agency fees to nonmember Ono is an internal union matter which does not have a substantial impact of the relationship of unit members to the **District**. Thus, no-violation of the duty of fair representation has been presented.

Charging Party asserts that the Federation **discriminated** when it decided to refund agency fees to unit member Ono. To demonstrate a violation of EERA section 3543.6(b), **Charging Party must meet** the analytical standard applied to **cases of employer discrimination**. State of California (Dept. of Developmental Services) (1983) PERB Decision No. 344-S. Thus, **Charging Party** is required to show that: (1) the employee exercised **rights** under the EERA, (2) the union had knowledge of the exercise of those rights, and (3) the union imposed or threatened to **impose** reprisals, discriminated or threatened to **discriminate**, or otherwise interfered with, restrained or coerced the employees because of the exercise of those rights. Novato Unified School District (1982) PERB Decision No. 210; Carlsbad Unified School District (1979) PERB Decision No. 89; Department of Developmental Services (1982) PERB Decision No. 228-S; California State University (Sacramento) (1982) PERB Decision No. 211-H.

Although the timing of the union's adverse action in close temporal proximity to the employee's protected conduct is an important factor, it does not, without more, demonstrate the necessary connection or "nexus" between the adverse action and the protected conduct. Moreland Elementary School District (1982) PERB Decision No. 227. Facts establishing one or more of the following additional factors must also be present: (1) the union's disparate treatment of the employee, (2) the union's departure from established procedures and standards when dealing with the employee, (3) the union's inconsistent or contradictory justifications for its actions, (4) the union's cursory investigation of the employee's misconduct, (5) the union's failure to offer the employee justification at the time it took action or the offering of exaggerated, vague, or ambiguous reasons, or (6) any other facts which might demonstrate the union's unlawful motive. Novato Unified School District, supra? North Sacramento School District (1982) PERB Decision No. 264.

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This charge does not indicate that Charging Party engaged in protected activity, that the Federation had knowledge of this activity, and that the Federation's refusal to refund Charging Party's agency fees was motivated by the protected conduct.

No discrimination has been demonstrated by the Charging Party. The Federation's decision to return these agency fees to objector Ono is analogous to a defendant settling a lawsuit with a plaintiff. Requiring the Federation to return all nonmembers' agency fees would be equivalent to requiring a settling defendant to pay a settlement to anyone who asked for it, even individuals who were not plaintiffs.

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 June 14, 1991, I shall dismiss your charge. If you have any questions, please call me at (916) 323-8015.

Sincerely,

Robert Thompson  
Deputy General Counsel

## PUBLIC EMPLOYMENT RELATIONS BOARD



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



July 1, 1991

Charles A. Nelson

RE: Charles A. Nelson v. Los Rios College Federation of  
Teachers, CFT, AFT, Local 2279  
Unfair Practice Charge No. S-CO-262  
DISMISSAL OF CHARGE

Dear Mr. Nelson:

The above-referenced charge alleges that the Los Rios College Federation of Teachers, CFT, AFT, Local 2279 (Federation) discriminated against non-federation unit members and breached it's duty of fair representation to these individuals by failing to return their fair share fees. This conduct is alleged to violate sections 3543.6 (b) and 3544.9 of the Educational Employment Relations Act (EERA).

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Letter to Charles A. Nelson  
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Finally, these facts do not support the finding of a prima facie violation of the statute based on O'Connell. That case stands for the proposition that "...a prima facie case of a breach of the duty of fair representation has been stated where it is alleged that the exclusive representative knowingly misrepresented a fact in order to secure from its constituents their ratification of a contract." The alleged misrepresentation presented here does not relate to ratification of any contract. Rather, it is essentially a statement of law indicating a nonmembers' obligation to pay an agency fee where such has been properly negotiated between the Federation and the employer. Thus, there is no prima facie case based on the O'Connell ruling.

#### 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 Regs., tit. 8, sec. 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

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<sup>1</sup>This case was incorrectly cited in the amended charge as PERB Decision No. 916-H [11 PERC Par. 18070].

Letter to Charles A. Nelson  
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Sacramento, CA 95814

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#### Service

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Page 4  
July 1, 1991

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             
**ROBERT THOMPSON**  
Deputy General Counsel

cc: Michael J. Crowley

Attachment

## PUBLIC EMPLOYMENT RELATIONS BOARD



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



June 7, 1991

Charles A. Nelson

RE: Charles A. Nelson v. Los Rios College Federation of  
Teachers. CFT. AFT<sub>f</sub> Local 2279  
Unfair Practice Charge No. S-CO-262  
WARNING LETTER

Dear Mr. Nelson:

The above-referenced charge alleges that the Los Rios College Federation of Teachers, CFT, AFT, Local 2279 (Federation) discriminated against non-federation unit members and breached it's duty of fair representation to these individuals by failing to return their fair share fees. This conduct is alleged to violate sections 3543.6 (b) and 3544.9 of the Educational Employment Relations Act (EERA).

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Letter to Charles A. Nelson  
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June 7, 1991

In December 1990, unit member Marian Ono filed a challenge to the union's determination of the agency fee. The Federation commenced collection of the fair share fee with the January 1991 pay period.

In a May 3, 1991 letter, the Federation informed Ms. Ono that the arbitration scheduled to hear her challenge had been cancelled and that her agency fees, with interest, were being returned to her. In addition, the letter stated that she was being refunded \$63.68 for agency fees to be collected in May and June. The letter continued that her money was being refunded to avoid the "enormous expense involved arbitrating challenges to the fee."<sup>1</sup> At this time, it is unknown whether the other three employees who objected to the agency fee also received their money back. Ms. Ono is presently asking the American Arbitration Association whether the arbitration is going to be rescheduled.

The charge alleges that the Federation violated the EERA by returning fair share fees to unit member Ono without extending this opportunity to all other fair share fee payers in the bargaining unit. Based on these facts, this charge does not 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 primarily to grievance handling and contract negotiations. Fremont Teachers Association (King)

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<sup>1</sup> It appears from the correspondence provided that the decision to refund Ms. Ono's agency fees was based on an economic determination made by the Federation. Namely, it would cost the Federation less money to return Ms. Ono's fees than it would to conduct an arbitration over her objection to the fees. The Federation apparently relies on a reading of agency fee law, including Chicago Teachers' Association v. Hudson, (1986) 475 U.S. 292. Hudson sets out specific procedures which are designed to protect the First Amendment rights of agency fee payers. These procedures are designed to prevent an exclusive representative's wrongful use of agency fees. Thus, the Federation would argue, where an employee has no agency fees deducted from their paycheck, these procedural rights do not apply and there is no need for an agency fee arbitration.

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June 7, 1991

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Robert Thompson  
Deputy General Counsel

## PUBLIC EMPLOYMENT RELATIONS BOARD



Headquarters Office  
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July 1, 1991

Michael A. Syas

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". . . you are required as a condition of employment, either to join AFT Local 2279 and pay union dues, or pay a service fee as described herein . . . ." The amended charge alleges that this statement is a grossly negligent, arbitrary and devoid of honest judgement misrepresentation and as such violates the duty of fair representation. The charge asserts that such knowing misrepresentations constitute a violation of the duty of fair

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representation under California State Employees' Association (O'Connell) (1986) PERB Decision No. 596-H [11 PERC Par. 18010].<sup>1</sup>

The additional information provided in the amended charge and summarized above is insufficient to state a prima facie violation of the EERA for the reasons contained in my June 7, 1991 letter and the following.

The Federation's November 30 memo coupled with its subsequent decision to return agency fees to Ms. Ono does not support the legal conclusion that the Federation knowingly misrepresented facts to bargaining unit members. The theory apparently is that the Federation knew on November 30 when it issued the memo that the statement concerning the agency fee requirement was false. There is no evidence supporting this assertion. In fact, the Federation's decision to return Ms. Ono's fees probably would not have been made until after Ms. Ono filed her objection to the fee on December 28, 1990.

Finally, these facts do not support the finding of a prima facie violation of the statute based on O'Connell. That case stands for the proposition that "...a prima facie case of a breach of the duty of fair representation has been stated where it is alleged that the exclusive representative knowingly misrepresented a fact in order to secure from its constituents their ratification of a contract." The alleged misrepresentation presented here does not relate to ratification of any contract. Rather, it is essentially a statement of law indicating a nonmembers' obligation to pay an agency fee where such has been properly negotiated between the Federation and the employer. Thus, there is no prima facie case based on the O'Connell ruling.

#### 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 Regs., tit. 8, sec. 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

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<sup>1</sup>This case was incorrectly cited in the amended charge as PERB Decision No. 916-H [11 PERC Par. 18070].

Letter to Michael A. Syas  
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the last date set for filing (California Code of Regs., tit. 8, sec. 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 Regs., tit. 8, sec. 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 Regs., tit. 8, sec. 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 Regs., tit. 8, sec. 32132).

Letter to Michael A. Syas  
Page 4  
July 1, 1991

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 \_  
Robert Thompson  
Deputy General Counsel

cc: Michael J. Crowley

Attachment

## PUBLIC EMPLOYMENT RELATIONS BOARD



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



June 7, 1991

Michael A. Syas

RE: Michael A. Syas v. Los Rios College Federation of Teachers.  
CFT. AFT. Local 2279  
Unfair Practice Charge No. S-CO-263  
WARNING LETTER

Dear Mr. Syas:

The above-referenced charge alleges that the Los Rios College Federation of Teachers, CFT, AFT, Local 2279 (Federation) discriminated against non-federation unit members and breached it's duty of fair representation to these individuals by failing to return their fair share fees. 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 information. The Federation and the Los Rios Community College District (District) are parties to a collective bargaining agreement covering the certificated bargaining unit which expires on June 30, 1993. As a part of that bargaining unit, you voted in October 1990 in an election in which the majority ratified the fair share agreement provisions of this contract. On November 30, 1990, the Federation wrote to all fair share fee payers informing them of their rights and providing them a breakdown of total union expenses including a description of the union expenses which are non-chargeable to agency fee payers. The letter also stated that fee payers wishing to object to and/or challenge the Federation's determination of the chargeable percentage must file a written objection within 30 days from the date of the notice. The challenge procedure ends in an arbitration before a neutral from the American Arbitration Association.

Letter to Michael A. Syas  
Page 2  
June 7, 1991

In December 1990, unit member Marian Ono filed a challenge to the union's determination of the agency fee. The Federation commenced collection of the fair share fee with the January 1991 pay period.

In a May 3, 1991 letter, the Federation informed Ms. Ono that the arbitration scheduled to hear her challenge had been cancelled and that her agency fees, with interest, were being returned to her. In addition, the letter stated that she was being refunded \$63.68 for agency fees to be collected in May and June. The letter continued that her money was being refunded to avoid the "enormous expense involved arbitrating challenges to the fee."<sup>1</sup> At this time, it is unknown whether the other three employees who objected to the agency fee also received their money back. Ms. Ono is presently asking the American Arbitration Association whether the arbitration is going to be rescheduled.

The charge alleges that the Federation violated the EERA by returning fair share fees to unit member Ono without extending this opportunity to all other fair share fee payers in the bargaining unit. Based on these facts, this charge does not 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 primarily to grievance handling and contract negotiations. Fremont Teachers Association (King)

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<sup>1</sup> It appears from the correspondence provided that the decision to refund Ms. Ono's agency fees was based on an economic determination made by the Federation. Namely, it would cost the Federation less money to return Ms. Ono's fees than it would to conduct an arbitration over her objection to the fees. The Federation apparently relies on a reading of agency fee law, including Chicago Teachers' Association v. Hudson, (1986) 475 U.S. 292. Hudson sets out specific procedures which are designed to protect the First Amendment rights of agency fee payers. These procedures are designed to prevent an exclusive representative's wrongful use of agency fees. Thus, the Federation would argue, where an employee has no agency fees deducted from their paycheck, these procedural rights do not apply and there is no need for an agency fee arbitration.

Letter to Michael A. Syas  
Page 3  
June 7, 1991

(1980) PERB Decision No. 125; United Teachers of Los Angeles (Collins) (1983) PERB Decision No. 258; Rocklin Teachers Prof. Association (Romero) (1980) PERB Decision No. 124. The Board has determined that the duty of fair representation does not apply to internal union activities that do not have a substantial impact on the relationships of unit members to their employers. Service Employees International Union, Local 99 (1979) PERB Decision No. 106. The decision to refund agency fees to nonmember Ono is an internal union matter which does not have a substantial impact of the relationship of unit members to the District. Thus, no violation of the duty of fair representation has been presented.

Charging Party asserts that the Federation discriminated when it decided to refund agency fees to unit member Ono. To demonstrate a violation of EERA section 3543.6(b), Charging Party must meet the analytical standard applied to cases of employer discrimination. State of California (Dept. of Developmental Services) (1983) PERB Decision No. 344-S. Thus, Charging Party is required to show that: (1) the employee exercised rights under the EERA, (2) the union had knowledge of the exercise of those rights, and (3) the union imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained or coerced the employees because of the exercise of those rights. Novato Unified School District (1982) PERB Decision No. 210; Carlsbad Unified School District (1979) PERB Decision No. 89; Department of Developmental Services (1982) PERB Decision No. 228-S; California State University (Sacramento) (1982) PERB Decision No. 211-H.

Although the timing of the union's adverse action in close temporal proximity to the employee's protected conduct is an important factor, it does not, without more, demonstrate the necessary connection or "nexus" between the adverse action and the protected conduct. Moreland Elementary School District (1982) PERB Decision No. 227. Facts establishing one or more of the following additional factors must also be present: (1) the union's disparate treatment of the employee, (2) the union's departure from established procedures and standards when dealing with the employee, (3) the union's inconsistent or contradictory justification^ for its actions, (4) the union's cursory investigation of the employee's misconduct, (5) the union's failure to offer the employee justification at the time it took action or the offering of exaggerated, vague, or ambiguous reasons, or (6) any other facts which might demonstrate the union's unlawful motive. Novato Unified School District, supra; North Sacramento School District (1982) PERB Decision No. 264.

Letter to Michael A. Syas  
Page 4  
June 7, 1991

This charge does not indicate that Charging Party engaged in protected activity, that the Federation had knowledge of this activity, and that the Federation's refusal to refund Charging Party's agency fees was motivated by the protected conduct.

No discrimination has been demonstrated by the Charging Party. The Federation's decision to return these agency fees to objector Ono is analogous to a defendant settling a lawsuit with a plaintiff. Requiring the Federation to return all nonmembers' agency fees would be equivalent to requiring a settling defendant to pay a settlement to anyone who asked for it, even individuals who were not plaintiffs.

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 June 14, 1991, I shall dismiss your charge. If you have any questions, please call me at (916) 323-8015.

Sincerely,

Robert Thompson  
Deputy General Counsel

## PUBLIC EMPLOYMENT RELATIONS BOARD



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



July 1, 1991

Ronald M. Charles, Sr.

RE: Ronald M. Charles. Sr. v. Los Rios College Federation of  
Teachers. CFT. AFT. Local 2279  
Unfair Practice Charge No. S-CO-264  
DISMISSAL OF CHARGE

Dear Mr. Charles:

The above-referenced charge alleges that the Los Rios College Federation of Teachers, CFT, AFT, Local 2279 (Federation) discriminated against non-federation unit members and breached it's duty of fair representation to these individuals by failing to return their fair share fees. 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 June 7, 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 June 14, 1991, the charge would be dismissed.

On June 11, 1991, you requested and received an extension of time to file an amended charge. The amended charge was filed on June 26, 1991 and contains the same information provided in the original charge with the following additional material. On November 30, 1990, the Federation sent a memo to all fair share fee payers. This memo contained the following statement ". . . you are required as a condition of employment, either to join AFT Local 2279 and pay union dues, or pay a service fee as described herein . . . ." The amended charge alleges that this statement is a grossly negligent, arbitrary and devoid of honest judgement misrepresentation and as such violates the duty of fair representation. The charge asserts that such knowing misrepresentations constitute a violation of the duty of fair

Letter to Ronald M. Charles, Sr.  
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representation under California State Employees' Association  
(O'Connell) (1986) PERB Decision No. 596-H [11 PERC Par. 18010].<sup>1</sup>

The additional information provided in the amended charge and summarized above is insufficient to state a prima facie violation of the EERA for the reasons contained in my June 1, 1991 letter and the following.

The Federation's November 30 memo coupled with its subsequent decision to return agency fees to Ms. Ono does not support the legal conclusion that the Federation knowingly misrepresented facts to bargaining unit members. The theory apparently is that the Federation knew on November 30 when it issued the memo that the statement concerning the agency fee requirement was false. There is no evidence supporting this assertion. In fact, the Federation's decision to return Ms. Ono's fees probably would not have been made until after Ms. Ono filed her objection to the fee on December 28, 1990.

Finally, these facts do not support the finding of a prima facie violation of the statute based on O'Connell. That case stands for the proposition that "...a prima facie case of a breach of the duty of fair representation has been stated where it is alleged that the exclusive representative knowingly misrepresented a fact in order to secure from its constituents their ratification of a contract." The alleged misrepresentation presented here does not relate to ratification of any contract. Rather, it is essentially a statement of law indicating a nonmembers' obligation to pay an agency fee where such has been properly negotiated between the Federation and the employer. Thus, there is no prima facie case based on the O'Connell ruling.

#### 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 Regs., tit. 8, sec. 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

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Letter to Ronald M. Charles, Sr.  
Page 3  
July 1, 1991

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Public Employment Relations Board  
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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 (California Code of Regs., tit. 8, sec. 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 Regs., tit. 8, sec. 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.

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Letter to Ronald M. Charles, Sr.  
Page 4  
July 1, 1991

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  
Robert Thompson  
Deputy General Counsel

cc: Michael J. Crowley

Attachment

## PUBLIC EMPLOYMENT RELATIONS BOARD



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



June 7, 1991

Ronald M. Charles, Sr.

RE: Ronald M. Charles. Sr. v. Los Rios College Federation of Teachers. CFT. AFT. Local 2279  
Unfair Practice Charge No. S-CO-264  
WARNING LETTER

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June 7, 1991

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<sup>1</sup> It appears from the correspondence provided that the decision to refund Ms. Ono's agency fees was based on an economic determination made by the Federation. Namely, it would cost the Federation less money to return Ms. Ono's fees than it would to conduct an arbitration over her objection to the fees. The Federation apparently relies on a reading of agency fee law, including Chicago Teachers' Association v. Hudson, (1986) 475 U.S. 292. Hudson sets out specific procedures which are designed to protect the First Amendment rights of agency fee payers. These procedures are designed to prevent an exclusive representative's wrongful use of agency fees. Thus, the Federation would argue, where an employee has no agency fees deducted from their paycheck, these procedural rights do not apply and there is no need for an agency fee arbitration.

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June 7, 1991

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Letter to Ronald M. Charles, Sr.  
Page 4  
June 7, 1991

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Sincerely,

Robert Thompson  
Deputy General Counsel