

15 PERC ¶ 22175

CORONA-NORCO TEACHERS ASSOCIATION (PALOMA)

California Public Employment Relations Board

**Erma M. Paloma, Charging Party, v. Corona-Norco Teachers Association,
Respondent.**

Docket No. LA-CO-562

Order No. 909

November 7, 1991

Before Hesse, Chairperson; Shank and Camilli, Members

Duty Of Fair Representation -- Refusal To Pursue Arbitration -- Informing Employee Of Decision -- 23.21, 23.24, 73.113 In absence of discriminatory, arbitrary or bad-faith conduct, union did not violate its duty of fair representation where grievance committee voted not to pursue arbitration of teacher's grievance, which challenged school district's decision to reassign teacher from kindergarten to second grade. Fact that union failed to notify teacher of its decision in writing, while providing written notice to other teachers, was insufficient to establish that union was unlawfully motivated. Similarly, fact that teacher left numerous unreturned messages seeking information from union was insufficient to establish violation of Act.

APPEARANCES:

Erma M. Paloma, on her own behalf;

California Teachers Association by Charles R. Gustafson, Attorney, for Corona-Norco Teachers Association.

Decision and Order

CAMILLI, Member

This case is before the Public Employment Relations Board (PERB or Board) on appeal by Erma M. Paloma (Paloma) of a PERB Board agent's dismissal (attached hereto) of her charge alleging that the Corona-Norco Teachers Association (Association) violated section 3543.6(b) of the Educational Employment Relations Act (EERA)¹ by denying Paloma's request to pursue a grievance against her employer to arbitration.

In her appeal, Paloma asserts that as a result of telephone conversations with the PERB Board agent, it is her belief that the Board agent is biased in favor of the Association. With regard to Paloma's contention of bias on the part of the Board agent, the Board finds no basis for such a claim. In addition, Paloma asserts that the Association has never notified her in writing of its denial of her request to pursue her grievance to arbitration.² She asserts that this is evidence that the Association's conduct in denying her request was arbitrary, discriminatory and in bad faith.

In his warning and dismissal letters, the Board agent discusses Paloma's allegation that the Association violated the duty of fair representation because: (1) the Association did not inform Paloma of its decision in writing; and (2) the Association's grievance chairman, Max Wallace, did not notify Paloma that her request had been denied until after she had made numerous calls and left messages with the Association. In his warning and dismissal letters, the PERB Board agent correctly finds that neither this conduct nor any other conduct alleged in the charge constitute arbitrary, discriminatory or bad faith conduct in violation of the duty of fair representation.

The Board has reviewed the Board agent's warning and dismissal letters, and finding them to be free of prejudicial error, adopt them as the decision of the Board itself.

The unfair practice charge in Case No. LA-CO-562 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairperson Hesse and Member Shank joined in this Decision.

1 EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3543.6 states, in pertinent part:

It shall be unlawful for an employee organization to:

(b) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

2 The Association's response asserts that it has already sent a letter to Paloma explaining its decision.E

Dismissal and Refusal to Issue Complaint

I indicated to you in my attached letter dated September 4, 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 September 11, 1991, the charge would be dismissed.

On September 16, 1991, I received from you an amended charge. The amended charge argues in part (1) that you were "transferred" rather than "reassigned" from kindergarten to second grade and (2) that Level Two grievances "automatically go to advisory arbitration." Both of these arguments are contradicted by the contractual language and other undisputed facts.

Although Section 14.1 of the collective bargaining agreement defines "transfer" to include "any District action which results in the change of a unit member's . . . grade level," it immediately goes on to state as follows: "For the purposes of this section, the 'grade level' shall be K-6, 7-8, or 9-12." In changing from kindergarten to second grade, you thus remained in the same "grade level" (K-6) and therefore were not "transferred" within the meaning of the agreement.

Section 20.2(c) of the agreement provides in relevant part as follows:

Level Three: In the event the grievant is not satisfied with the disposition of the grievance at Level II, the grievant may, within ten (10) days following, submit a written request to the Association that the Association submit the grievance to advisory arbitration. The Association, by written notice to the Superintendent within ten (10) days after receipt of the grievant's request, *may* submit the grievance to the advisory arbitration. [Emphasis added.]

The use of the word "may" in this Section (rather than the word "shall," for example) indicates that the submission of a grievance to advisory arbitration is not automatic or mandatory but rather discretionary. The letters attached to your original charge show that in the past the Association has in fact exercised its discretion not to pursue other grievances to advisory arbitration.

In your amended charge, you also allege that Association Grievance Chairman Max Wallace did not contact you about the status of your grievance until after you yourself had made numerous calls and left messages. It is still not apparent from the charge, however, how this or any other part of the Association's handling of your grievance amounted to arbitrary, discriminatory or bad faith conduct in violation of the duty of fair representation. I am therefore dismissing the charge,

based on the facts and reasons contained in this letter and in my September 4 letter.

Warning Letter

In the above referenced charge, you allege that the Corona-Norco Teacher's Association (Association) violated its duty of fair representation, in alleged violation of Government Code section 3543.6(b) of the Educational Employment Relations Act (EERA).

My investigation of this charge reveals the following facts.

You are a certificated employee of the Corona-Norco Unified School District (District), in a unit for which the Association is the exclusive representative. For seventeen years you taught kindergarten, and in 1990-91 you were on Track D. On April 4, 1991, you were called to a meeting in your Principal's office, where the presence of both the Principal and the Vice Principal led you to believe that the meeting was "corrective." The Principal informed you, without discussion, that you were being reassigned to teach second grade on Track A for 1991-92.

On April 8, 1991, you filed grievances alleging violations of Sections 14.1 and 14.5 of the collective bargaining agreement between the District and the Association. Section 14.1 provides in relevant part, "At the elementary level a change of more than two grades . . . will be discussed with the affected teacher prior to any final decision." Section 14.5 provides in full, "No transfers or class assignments shall be made for disciplinary reasons." In your grievance, you stated that you felt your reassignment was "for disciplinary reasons" because (1) your old assignment was going to a teacher about whom parents had voiced concerns and (2) you had spoken out against the Principal on PTA issues.

The District denied your grievances at Level One and Level Two. In his Level One response, your Principal stated in part, "Your assignment of second grade has been made solely upon your strengths [sic] and we believe you will positively strengthen [sic] our second grade team of teachers." On May 6, 1991, you submitted a letter to the Association, requesting that it "respond to me in writing" and "submit my grievance to advisory arbitration."

Although you were not informed of the meeting, the Association's Grievance Committee met on May 13, 1991, and decided not to pursue your grievances to arbitration. In its response to your unfair practice charge, the Association asserts that it found no violation of Section 14.1 because a "move from kindergarten to second grade is a move of two grades, not *more than* two grades [emphasis original]." It also asserts that it found no provable violation of Section 14.5 because there was no pending disciplinary action against you, there was nothing to tie the reassignment to your outspokenness on PTA issues, and there was insufficient evidence in general to show that the reassignment was for disciplinary reasons.

The Association did not inform you of its decision in writing. Attached to your charge are copies of letters to two other unit members, informing them (without explanation) that their grievances would not be taken to arbitration. You identify these two unit members as Caucasian; you identify yourself as Asian. In its response to your charge, the Association asserts that it "decided that instead of issuing the usual form letter telling the employee her grievance would not be taken to arbitration, it would direct the Grievance Chairman, Max Wallace, to meet personally with Ms. Paloma and explain why the matter would not be taken to arbitration."

Based on the facts stated above, the charge does not state a prima facie violation of the EERA, for the reasons that follow.

As Charging Party, you allege that the Association, as exclusive representative, denied you the right to fair representation guaranteed by EERA section 3544.9 and thereby violated section EERA 3543.6(b). The duty of fair representation imposed on the exclusive representative extends to grievance handling. *Fremont Teachers Association (King)* (1980) PERB Decision No. 125; *United Teachers of Los Angeles (Collins)* (1983) PERB Decision No. 258. In order to state a prima facie violation of this section of the EERA, a Charging Party must show that the exclusive representative's conduct was arbitrary, discriminatory, or in bad faith. In *United Teachers of Los*

Angeles (Collins), id., the Public Employment Relations Board (PERB) stated:

Absent bad faith, discrimination, or arbitrary conduct, mere negligence or poor judgment in handling a grievance does not constitute a breach of the union's duty.

. . .

A union may exercise its discretion to determine how far to pursue a grievance on the employee's behalf as long as it does not arbitrarily ignore a meritorious grievance or process a grievance in a perfunctory fashion. A union is also not required to process an employee's grievance if the chances for success are minimal.

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.

It is not apparent from the charge how the Association's conduct was without a rational basis, devoid of honest judgment, discriminatory or in bad faith. It is true that the Association did not respond to you in writing, as it did to other employees (whose grievances also were not taken to arbitration), but there is no prima facie showing that this conduct was based on an illegitimate or impermissible reason.
