

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LETICIA GONZALEZ,)
)
 Charging Party,) Case No. S-CO-267
)
 v.) PERB Decision No. 935
)
 LINDSAY TEACHERS ASSOCIATION,) May 22, 1992
)
 Respondent.)
_____)

Appearances: Leticia Gonzalez, on her own behalf; California Teachers Association by Ramon E. Romero, Attorney, for Lindsay Teachers Association.

Before Hesse, Chairperson; Camilli and Caffrey, Members.

DECISION AND ORDER

CAFFREY, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Leticia Gonzalez (Gonzalez) of a PERB Board agent's dismissal (attached hereto) of her unfair practice charge. In her charge, Gonzalez alleged that the Lindsay Teachers Association violated section 3543.6(b) of the Educational Employment Relations Act (EERA)¹ by failing to advocate on her behalf at a meeting at which she was informed she would not be rehired and by failing to respond to her letters.

¹EERA is codified at Government Code section 3540 et seq. 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.

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

The unfair practice charge in Case No. S-CO-267 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairperson Hesse and Member Camilli joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



February 4, 1992

Leticia Gonzalez

Re: Leticia Gonzalez v. CTA - Kings/Tulare Uniserve Unit, Inc.
Unfair Practice Charge Case No. S-CO-267
DISMISSAL LETTER

Dear Ms. Gonzalez:

On August 30, 1991, you filed a charge that the Lindsay Teachers Association¹ (Association or LTA) violated Government Code section 3543.6(b) (the EERA). Specifically, you allege that the Association violated its duty of fair representation by failing to advocate for you during a meeting on March 1, 1991, when you were informed that you would not be rehired for the 1991-92 school year and by failing to respond to your letters of June 12, 1991 and August 6, 1991.

I indicated to you in my attached letter dated October 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 October 15, 1991, the charge would be dismissed. You requested additional time to file an amended charge. We agreed to an extension of time until October 21, 1991. On October 21, 1991, you filed your first amended charge. In addition, you also submitted numerous unorganized notes and exhibits (totalling 154 pages) in support of your amended charge.

Your amended charge appears to allege the following facts, which I have summarized:

¹your original charge named CTA - Kings/Tulare Uniserve Unit, Inc. (CTA) as the employee organization. On October 23, 1991, pursuant to my telephone call you filed an amended charge which named the Lindsay Teachers Association as the respondent.

1. On or about September 6, 1990, Lindsay Teachers Association (LTA), School Site Representative, Harry Schein failed to inform you that the School's student calendar was supposed to be bilingual.

2. On or about October 23, 1990, LTA District Grievance Representative Mike Green discouraged you from grieving your concerns regarding your right to disperse information to bilingual teachers by leading you to believe that he would meet with Principal Mike McQuary on this matter.

3. On or about February 19, 1991 you attempted to meet with LTA President Nichols concerning the discriminatory problems against Bilingual Teachers and the Bilingual Program at Jefferson. However, Ms. Nichols refused to meet with you and suggested that you speak with the school-site Bilingual Resource Teachers, Irene Rosales and Rita Henry.

4. After your conversation with Ms. Nichols, you contacted Jack Cottrell of Kings/Tulare Uniserve and requested to remain anonymous. However, Cottrell responded, "Don't give me this shit. . . that I [you] not waste his time, etc. . ." Cottrell also informed you during this conversation that there was nothing he could do. "That you couldn't force a principal to be a good manager." You also asked Cottrell for the telephone number of a CTA Attorney and he refused to give it to you.

5. On or about April 8, 1991, during a telephone conversation with LTA President, Judy Nichols you were informed Schein had all copies of a letter from the LTA dated March 12, 1991 to the District Superintendent protesting publication of the names of the laid off teachers in the local newspaper on March 6, 1991. You also allege that Ms. Nichols requested that you immediately request a copy of the LTA protest letter from Stein and "post it as it was supposed to have been done."

6. On or about April 23, 1991, you spoke with Stein in the school parking lot and asked him if LTA could do anything about the teacher lay-offs. He responded that "LTA could not touch the District, especially with first-year teachers."

Based on the allegations set forth above and the reasons contained in this letter and my letter of October 4, 1991, I find that you have failed to state a prima facie violation that the Association denied you the right to fair representation guaranteed by EERA section 3544.9 and thereby violated EERA section 3543.6(b).

In order to state a prime facie case a Charging Party must allege and ultimately establish that the conduct complained of either occurred or was discovered within the six-month period immediately preceding the filing of the charge. (San Dieguito Union High School District (1982) PERB Decision No. 194.) Government Code section 3514.5(a) states in relevant part:

Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not do either of the following: (1) 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, . . .

Your charge was filed with PERB on August 30, 1991, which means that any alleged unfair practice should have occurred during the six-month statutory period which began on February 26, 1991. The allegations contained in paragraphs 1-4 above describe conduct by the Association which occurred prior to February 26, 1991. This is beyond the six-month statute of limitations, therefore, those allegations contained in your charge must be dismissed.

The allegations contained in paragraphs 5 and 6 above appear to allege that the Association denied you the right to fair representation guaranteed by EERA section 3544.9 and thereby violated EERA section 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) (198.3) PERB Decision No. 332, citing Rocklin Teachers Professional Association (Romero) (1980) PERB Decision No. 124.)

Your charge fails to state sufficient facts from which it becomes apparent how or in what manner the Association's action or inaction was without a rational basis or devoid of honest judgment. Therefore, your charge fails to state a prima facie violation of the duty of fair representation and I am dismissing the charge based on the facts and reasons contained in this letter and my letter of October 4, 1991.

I have also considered the notes and exhibits you submitted in support of your amended charge. This material was not organized and I was unable to determine what connection, if any, this material had in reference to your charge. PERB Regulation 32615 (California Code of Regs., tit. 8, sec. 32615) requires that your charge contain a clear and concise statement of the facts and conduct alleged to constitute an unfair practice. Your notes and exhibits fail to meet this standard, therefore, the allegations, if any, contained in them are also 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 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 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

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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).

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
Michael E. Gash
Regional Attorney

Attachment

cc: Jack Cathrell
Kings/Tulare Uniserve Unit, Inc.-CTA
1844 South Mooney Blvd., Suite L
Visalia, CA 93277

Ramon E. Romero
California Teachers Assn.
P. O. Box 921
Burlingame CA 94011-0921

PUBLIC EMPLOYMENT RELATIONS BOARD



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



October 4, 1991

Leticia Gonzalez

Re: Leticia Gonzalez v. CTA - Kings/Tulare Uniserve Unit. Inc.
Unfair Practice Charge No. S-CO-267

WARNING LETTER

Dear Ms. Gonzalez:

On August 30, 1991, you filed a charge that the Lindsay Teachers Association¹ (Association) violated Government Code section 3543.5(b) (the EERA). Specifically, you allege that the Association violated its duty of fair representation by failing to advocate for you during a meeting on March 1, 1991, when you were informed that you would not be rehired for the 1991-92 school year and by failing to respond to your letters of June 12, 1991 and August 6, 1991. My investigation revealed the following facts.

Charging Party was employed, since March 1990, as a probationary Bilingual Education teacher at the second grade level at Jefferson School for the Lindsay Unified School District.

On or about March 1, 1991, in the presence of Union Representative, Harry Schein, Charging Party was notified by School Principal, Mike McQuary that she would not be rehired for the 1991-92 school year.

¹Your charge named CTA - Kings/Tulare Uniserve Unit, Inc. (CTA) as the employee organization. The Lindsay Teachers Association (Association) is the exclusive representative of an appropriate unit of certificated employees of the Lindsay Unified School District. Kings/Tulare UniServe Unit is a subdivision of the California Teachers Association which is an affiliate of the Association. Since CTA is not the exclusive representative, your charge against CTA must be dismissed. However, rather than have you file an amended charge against the Association, your charge will be treated as if it was originally filed against the Association.

Charging Party contends they met twice on March 1, during which time Harry Schein did not advocate on her behalf. Charging Party also contends that when she asked Schein if he had any questions, his only response was "No".

During the week of March 5, 1991, Charging Party delivered a copy of a letter to her District Grievance Representative, Mike Green. The original letter was addressed to Principal McQuary, dated March 2, 1991. The letter requested that Principal McQuary rescind his decision not to rehire Charging Party for the 1991-92 school year. Charging Party did not receive a response from Union Representative Green.

On June 12, 1991, Charging Party again sent copies of the March 2, 1991 letter to Union Representative Green along with copies of evaluation/comments made by Principal McQuary and Charging Party's responses to those evaluations. This letter requested that Green review the information and let her know as soon as possible in writing if he could help. Green did not respond to this letter.

On August 6, 1991, Charging Party wrote to Jack Cathrell of CTA-Kings/Tulare Uniserve Unit, Inc. Charging Party expressed her concern regarding Green's failure to respond to her request for union assistance. Charging Party also sent to Cathrell copies of her March 2, 1991, letter to Principal McQuary and her responses to her end-of-the year evaluation.

Charging Party also requested that Cathrell review the information and let her know what he could do to help resolve her situation. Cathrell did not respond to Charging Party's letter of August 6, 1991.

Based on the allegations set forth above, I do not find that you have established a prima facie violation that the Association has violated its duty of fair representation.

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

arbitrary, discriminatory, or in bad faith. In United Teachers of Los Angeles (Collins). Id., the Public Employment Relations Board (PERB) stated:

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

.

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:

The facts alleged in your charge fail to assert sufficient facts from which it becomes apparent how or in what manner the Association's action or inaction, by failing to advocate in your behalf during the meeting on March 1, 1991, or Green and Cathrell's failure to respond to your letters² was without a rationale basis or devoid of honest judgment. In the absence of specific allegations of arbitrary, discriminatory, or bad faith

²Your charge alleges that during the week of March 5, 1991 you sent Green a copy of your letter to Principal McQuary dated March 2, 1991. However, your charge fails to allege any facts that you requested a response from Green at that time.

denial of representation, you have failed to establish a prima facie violation that the Association breached its duty to fairly represent you.

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 October 15, 1991, I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198.

Sincerely,

Michael E. Gash
Regional Attorney

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