

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ANNETTE M. DEGLOW,)
)
Charging Party,) Case No. SA-CO-314
)
v.) Request for Reconsideration
) PERB Decision No. 1133
LOS RIOS COLLEGE FEDERATION OF)
TEACHERS,) PERB Decision No. 1133a
)
Respondent.) May 14, 1997
_____)

Appearances; Annette M. Deglow, on her own behalf; Law Offices of Robert J. Bezemek by Adam H. Birnhak, Attorney, for Los Rios College Federation of Teachers.

Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION

CAFFREY, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on a request by Annette M. Deglow (Deglow) that the Board accept her late filed request to reconsider its decision in Los Rios College Federation of Teachers (Deglow) (1996) PERB Decision No. 1133 (Los Rios (Deglow)). In Los Rios (Deglow), the Board dismissed Deglow's unfair practice charge alleging that the Los Rios College Federation of Teachers (Federation) breached its duty of fair representation guaranteed by section 3544.9 of the Educational Employment Relations Act (EERA), thereby violating section 3543.6(b).¹

¹EERA is codified at Government Code section 3540 et seq. Section 3544.9 states:

The employee organization recognized or certified as the exclusive representative for the purpose of meeting and negotiating shall fairly represent each and every employee in the appropriate unit.

BACKGROUND

Deglow is one of several instructors within the Los Rios Community College District (District), employed prior to 1967, who filed grievances asserting that the District failed to properly account for their seniority and retirement credits. Deglow alleged that the Federation did not fairly represent her in her seniority and retirement credit grievances, and that the Federation refused to pursue the grievances to a board of review hearing. The board of review hearing was the last step in the District's grievance procedure, which did not provide for binding arbitration. The District's Board of Trustees has the authority to accept or reject recommendations of a board of review.

In Los Rios (Deglow), the Board adopted the administrative law judge's (ALJ) proposed decision finding that Deglow failed to show that the Federation breached its duty of fair representation in its handling of her grievances.

DEGLOW'S REQUEST

On February 6, 1997, Deglow filed her request to reconsider Los Rios (Deglow). She contends that testimony offered by a key witness for the Federation in the case was "false - misleading

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.

and untrue." Deglow offers portions of the transcript of the August 1994 PERB hearing in the case. The Federation witness testified that the Federation's February 1994 decision not to pursue Deglow's grievances to a board of review resulted, at least in part, from the Federation's view that the District's general counsel, Sue Shelley (Shelley), would ensure that any board of review ruling favorable to Deglow would not be accepted by the District's Board of Trustees.

Deglow submits a copy of a January 23, 1997, letter from the Federation to PERB, concerning another unfair practice charge, which states that Shelley "ended her professional relationship with the District in December 1993." Since Shelley was no longer employed by the District, Deglow asserts that the Federation's February 1994 decision not to pursue her grievances to a board of review could not, or should not, have been based on its view of Shelley's advice to the District. Therefore, either the Federation witness intentionally provided false and misleading testimony in the August 1994 PERB hearing, or the Federation was unaware of Shelley's status and its representation was grossly negligent. Deglow believes this information supports her claim that the Federation failed in its duty of fair representation.

Deglow asserts that she only became aware of these circumstances when she received a copy of the January 23, 1997, letter. Therefore, she argues that good cause exists to excuse her late filed request that the Board reconsider its decision in Los Rios (Deglow).

FEDERATION'S RESPONSE

In response, the Federation asserts that good cause does not exist to excuse Deglow's late filing for several reasons. Citing California State Employees Association. Local 1000 (Janowicz) (1996) PERB Order No. Ad-276-S, the Federation argues that Deglow did not make a conscientious effort to file her request on time. The Federation offers a June 13, 1994, memo from the District to all faculty and staff announcing the appointment of a new District general counsel. The Federation states that Deglow received this memo in June 1994, prior to the August 1994 PERB hearing. Since the District notified Deglow that a new general counsel had been appointed prior to the PERB hearing, her assertion that she only became aware in January 1997 of Shelley's 1993 retirement shows a lack of conscientious effort.

The Federation further asserts that the testimony of the Federation witness concerning Shelley's employment status with the District is not referenced in, and had no bearing on, the ALJ's or Board's decision to dismiss Deglow's charge. Therefore, Deglow has not explained how and why the allegedly misleading witness statements are relevant to the Board's decision.

The Federation also asserts that the witness' August 1994 testimony correctly reflects Shelley's potential role in Deglow's grievances. The Federation offers a February 18, 1997, letter from the District, concerning a recent Deglow grievance, that states:

While Ms. Shelley has been retired for several years, she remains the sole resource

for information regarding Ms. Deglow's series of actions against the District. As a result, the District staff must continue to rely on her expertise.

Finally, the Federation requests that the Board sanction Deglow by awarding the Federation full costs. The Federation notes that the Board has previously admonished Deglow concerning repeated filings of unfair practice charges involving allegations already considered by the Board.

DISCUSSION

PERB Regulation 32410² states, in pertinent part:

(a) Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision within 20 days following the date of service of the decision. . . . The grounds for requesting reconsideration are limited to claims that the decision of the Board itself contains prejudicial errors of fact, or newly discovered evidence or law which was not previously available and could not have been discovered with the exercise of reasonable diligence.

The Board issued Los Rios (Deglow) on January 19, 1996. Deglow filed her request to reconsider that decision on February 6, 1997, approximately one year after the due date for filing a request for reconsideration. Accordingly, the Board must address the issue of Deglow's late filing of her request.

PERB Regulation 32136 provides that:

A late filing may be excused in the discretion of the Board for good cause only. A late filing which has been excused becomes a timely filing under these regulations.

²PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

In applying this regulation, the Board has found good cause to excuse late filings when a party has demonstrated a conscientious effort to timely file. (North Orange County Regional Occupational Program (1990) PERB Decision No. 807; Trustees of the California State University (1989) PERB Order No. Ad-192-H.)

Deglow argues that good cause exists because she only became aware that "false - misleading and untrue" testimony was offered by a key Federation witness during the August 1994 PERB hearing when Deglow received a copy of a January 23, 1997, letter from the Federation to a Board agent.

Deglow's argument is not persuasive. The District apparently sent an announcement of the appointment of Shelley's replacement to all faculty and staff of the District in June 1994. Given the announcement, and the ensuing period of more than two and one-half years, it appears reasonable that Deglow could have discovered Shelley's departure prior to January 1997 through a conscientious effort. Accordingly, the Board finds that Deglow has not demonstrated good cause to excuse her late filing.

Regarding the Federation's request for costs, the Board will award costs where a case is without arguable merit, frivolous, vexatious, dilatory, pursued in bad faith or is otherwise an abuse of process. (Chula Vista City School District (1990) PERB Decision No. 834; United Professors of California (Watts) (1984) PERB Decision No. 398-H.) Costs will not be awarded where the issues are debatable and the case is brought in good faith.

(Chula Vista City School District (1982) PERB Decision No. 256.)

The Board concludes that costs should not be awarded to the Federation in this case.

ORDER

Annette M. Deglow's request to accept her late filed request for reconsideration of the Board's decision in Los Rios College Federation of Teachers (Deglow) (1996) PERB Decision No. 1133 is hereby DENIED.

Members Johnson and Dyer joined in this Decision.