

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ANNETTE M. DEGLOW,)
)
 Charging Party,) Case No. S-CO-356
)
 v.) PERB Decision No. 1137
)
 LOS RIOS COLLEGE FEDERATION OF)
 TEACHERS, CFT/AFT LOCAL 2279,) February 1, 1996
)
 Respondent.)
 _____)

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, CFT/AFT Local 2279.

Before Caffrey, Chairman; Garcia and Dyer, Members.

DECISION

DYER, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal of a Board agent's dismissal (attached) of an unfair practice charge filed by Annette M. Deglow (Deglow). In her charge, Deglow alleged that the Los Rios College Federation of Teachers, CFT-AFT Local 2279 (Federation) breached its duty of fair representation guaranteed by section 3544.9 of the Educational Employment Relations Act (EERA),¹ thereby violating EERA section 3543.6(b), when it

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.

EERA section 3543.6 states, in pertinent part:

published several articles in the union newspaper which discussed the unfair practice charges filed by Deglow.

The Board has reviewed the entire record in this case, including the warning and dismissal letters, Deglow's unfair practice charge and amended charges, Deglow's appeal and the Federation's response thereto. The Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself.²

The unfair practice charge in Case No. S-CO-356 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Garcia joined in this Decision.

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.

²The Board notes that it recently cautioned Deglow that the repeated pursuit of similar charges based on essentially the same circumstances may constitute an abuse of process. (See Los Rios College Federation of Teachers (Deglow) (1996) PERB Decision No. 1133.) The Board declines the Federation's request to sanction Deglow in this case, but reaffirms its recent warning.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



November 9, 1995

Annette M. Deglow

Re: Annette M. Deglow v. Los Rios College Federation of
Teachers, CFT/AFT Local 2279
Unfair Practice Charge No. S-CO-356
DISMISSAL LETTER

Dear Ms. Deglow:

On August 2, 1995, you filed the above-referenced charge alleging that the Los Rios College Federation of Teachers (LRCFT) violated its duty to fairly represent you. You amended the charge on August 4, 1995.

I indicated to you, in my attached letter dated October 5, 1995, 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 which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to October 12, 1995, the charge would be dismissed.

I received your amended charge on October 30, 1995. In your amended charge you continue to allege that articles published in the Los Rios College Federation of Teachers publication, The Union News, have been "distorted, misleading, inflated, argumentative and discriminatory" toward you. Those articles address the Union's position and officer's opinions with regard to unfair practice charges you and others filed against the Union in recent years.

Since the filing of your original charge, the Union printed a September 1995 edition of The Union News which included two articles which discussed unfair practice charges which you have brought against the LRCFT, including this charge. You contend that the Union is aware that you have had work related injuries and are susceptible to stress from your peers. You state that the May publication did in fact foster and generate peer pressure which resulted in emotional stress which exacerbated stress related ailments which you suffer.

You continue to contend that the Union's publications of articles in which you are referenced violates the Union's duty of fair

representative and interferes with your right to participate in protected activity including filing charges with PERB. However, you have supplied no facts which would change the reasoning of my letter of October 5, 1995. In that letter I explained why there were no facts which demonstrate a violation of the duty of fair representation or that the Union had improperly interfered with your right to engage in protected activities.¹ Accordingly, this charge will be dismissed for the reasons given in this letter and my letter of October 5, 1995.

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. (Cal. 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 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. (Cal. Code of Regs., tit. 8, sec. 32135.) Code of Civil Procedure section 1013 shall apply. The Board's address is:

Attention: Appeals Assistant
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 (20) calendar days following the date of service of the appeal. (Cal. 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 Cal. Code of Regs., tit. 8,

¹You contend that the Union articles have a greater effect on you because of your stress-related ailments. However, the standard for interference is an objective rather than a subjective one. The union actions must tend to interfere in the exercise of guaranteed rights. California Faculty Association (1988) PERB Dec. No. 693-H. That standard has not been met.

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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 (3) 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. (Cal. 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,

ROBERT THOMPSON
Deputy General Counsel

Bernard McMonigle
Regional Attorney

Attachment

cc: Adam Birnhak

PUBLIC EMPLOYMENT RELATIONS BOARD



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



October 5, 1995

Annette Deglow

Re: Annette Deglow v. Los Rios College Federation of Teachers
Unfair Practice Charge No. S-CO-356

WARNING LETTER

Dear Ms. Deglow:

On August 2, 1995, you filed the above-referenced charge alleging that the Los Rios College Federation of Teachers (LRCFT) violated its duty to fairly represent you. You amended the charge on August 4, 1995.

The above charge regards an article in the LRCFT publication "The Union News." The charge alleges that in the May 1995 edition, you were discredited when it was reported that a PERB administrative law judge had dismissed charges and complaints in a case you and other instructors had filed against the LRCFT. In that article, the union president stated his position that he viewed the charges as "frivolous and false." You contend that the article was inaccurate, not written in good faith, and was to serve as a sanction for exercising your right to file a charge before this agency.

Government Code section 3544.9 requires that an exclusive representative "for the purpose of meeting and negotiating shall fairly represent each and every employee in the appropriate unit." Accordingly, PERB has held that the duty of fair representation attaches during contract negotiations (Los Angeles Unified School District (1986) PERB Dec. No. 599) and during grievance handling and contract administration. (Rocklin Teachers Professional Association (1980) PERB Dec. No. 124.) However, internal union affairs are largely immune from scrutiny under the duty of fair representation analysis. In SEIU, Local 99 (Kimmitt) (1979) PERB Dec. No. 106 the Board determined that the fair representation duty found in Government Code section 3544.9 "contains no language indicating that the legislature intended that section to apply to internal union activities that did not have a substantial impact on the relationships of unit members to their employers." Because these statements do not appear to have a substantial impact on your relationship to your

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employer, these allegations do not state a prima facie violation of EERA section 3544.9.

The Board has investigated internal union activities which have either interfered or discriminated against employees by preventing participation in protected activities. (California State Employees Association (O'Connell) (1989) PERB Dec. No. 753-H). However, speech activity by the Union "is accorded generous protection" so long as it is related to matters of legitimate concern. (California Faculty Association (Hale, et al.) (1988) PERB Dec. No. 693-H.) Such free speech rights are similar to those accorded an employer. (California Faculty Association (Hale, supra.) The expression of views or opinion does not evidence an unfair practice unless there is a threat of reprisal or promise of benefit. (Rio Hondo Community College District (1980) PERB Dec. No. 128). Your allegations demonstrate no such threat or promise by the LRCFT.

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 additional facts which would correct the deficiencies explained above, please amend the charge. 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 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 12, 1995, I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198, extension 355.

Sincerely,

Bernard McMonigle
Regional Attorney

BMC:mmh