

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ANTHONY GABRIEL VASEK,)
)
 Charging Party,) Case No. LA-CO-664
)
 v.) PERB Decision No. 1147
)
 MT. SAN JACINTO COLLEGE FACULTY) March 15, 1996
 ASSOCIATION, CTA/NEA,)
)
 Respondent.)
 _____)

Appearances: Anthony Gabriel Vasek, on his own behalf;
California Teachers Association by Rosalind D. Wolf, Attorney,
for Mt. San Jacinto College Faculty Association, CTA/NEA.

Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION AND ORDER

JOHNSON, Member: This case is before the Public Employment Relations Board (Board) on appeal by Anthony Gabriel Vasek (Vasek) of a Board agent's dismissal (attached) of his unfair practice charge. Vasek filed an unfair practice charge alleging that the Mt. San Jacinto College Faculty Association, CTA/NEA (Association) breached the duty of fair representation mandated by section 3544.9 of the Educational Employment Relations Act (EERA) with regard to various grievances filed by him, conduct which was alleged to violate EERA section 3543.6(b).¹ After

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.

investigation, the Board agent dismissed the charge for failure to establish a prima facie case.

The Board has reviewed the entire record in this case, including the original and amended unfair practice charge, the warning and dismissal letters, Vasek's appeal, and the Association's opposition to the appeal. The Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself.

The unfair practice charge in Case No. LA-CO-664 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Dyer joined in this Decision.

EERA 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.

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Blvd., Suite 650
Los Angeles, CA 90010-2334
(213) 736-3127



October 25, 1995

Anthony Gabriel Vasek

Re: DISMISSAL AND REFUSAL TO ISSUE COMPLAINT, Unfair Practice
Charge No. LA-CO-664, Anthony Gabriel Vasek v. Mt. San
Jacinto College Faculty Association. CTA/NEA

Dear Dr. Vasek: _____

In the above-referenced charge, filed on July 5, 1995, you allege that the Mt. San Jacinto College Faculty Association, CTA/NEA (Association) denied you the right to fair representation guaranteed by Government Code section 3544.9 of the Educational Employment Relations Act (EERA) and thereby violated EERA section 3543.6(b).

I indicated to you, in my attached letter dated September 14, 1995, that the above-referenced charge did not state a prima facie case within PERB's jurisdiction. 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 September 25, 1995, the charge would be dismissed. I later extended that deadline.

On October 17, 1995, you filed an amended charge, including 58 exhibits (A through N and 1 through 44). It is still not apparent from the amended charge, however, how the Association's grievance-related conduct since January 5, 1995, was arbitrary, discriminatory or in bad faith. You allege that on October 13, 1995, you were informed that the Association had reorganized and enacted new policies to ensure that its members would be fairly and adequately represented. It is not apparent from the Association's alleged reorganization and new policies, however, how its previous grievance-related conduct was arbitrary, discriminatory or in bad faith. I am therefore dismissing the charge, based on the facts and reasons contained in this letter and my September 14 letter.

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,

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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:

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, 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.)

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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

THOMAS J. ALLEN
Regional Attorney

Attachment

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Blvd., Suite 650
Los Angeles, CA 90010-2334
(213)736-3127



September 14, 1995

Anthony Gabriel Vasek

Re: WARNING LETTER, Unfair Practice Charge No. LA-CO-664,
Anthony Gabriel Vasek v. Mt. San Jacinto College Faculty
Association. CTA/NEA

Dear Dr. Vasek:

In the above-referenced charge, filed on July 5, 1995, you allege that the Mt. San Jacinto College Faculty Association, CTA/NEA (Association) denied you the right to fair representation guaranteed by Government Code section 3544.9 of the Educational Employment Relations Act (EERA) and thereby violated EERA section 3543.6(b).

My investigation of the charge reveals the following facts.

You are employed by the Mt. San Jacinto Community College District (District) as a full-time faculty member, in a unit for which the Association is the exclusive representative. On August 26, 1994, you brought suit against the District and the Association. On July 5, 1995, you filed the present charge against the Association, as well as a separate charge against the District.

The present charge appears to allege five instances of Association conduct within the six months before the charge was filed (January 5, 1995 to July 5, 1995).

1. Until on or about January 16, 1995, the Association failed to inform you about the existence of EERA and PERB.
2. On or after January 19, 1995, the Association failed to take corrective action concerning the District's refusal to allow you to speak at a faculty workshop.
3. In "Spring 1995" the Association failed to take corrective action concerning your "oppressive teaching schedule."
4. On or about May 4, 1995, the Association indicated that it was "tempted" to take action concerning the docking of your pay but ultimately "did nothing."
5. The Association "recently" again "did nothing" concerning a disciplinary action taken against you.

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

EERA section 3541.5(a)(1) states that PERB "shall not . . . [i]ssue a complaint based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." Because the present charge was filed on July 5, 1995, any Association conduct prior to January 5, 1995, is outside PERB's jurisdiction.

In the charge, you argue that this six-month limitation should not apply to you because you "did not become aware of the existence of the EERA and PERB" until January 16, 1995. PERB has held, however, that the six-month limitation is mandatory and jurisdictional. (California State University, San Diego (1989) PERB Decision No. 718-H; Calexico Unified School District (1989) PERB Decision No. 754.) Your lack of awareness of EERA and PERB thus cannot give PERB authority over Association conduct prior to January 5, 1995.

As Charging Party, you allege that the Association, as your exclusive representative, denied you the right to fair representation guaranteed by EERA section 3544.9 and thereby violated section 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) (1982) PERB Decision No. 258.) It does not, however, extend to extracontractual matters. (California State Employees Association (Parisi) (1989) PERB Decision No. 733-S.) PERB has specifically held that the duty does not require an exclusive representative to advise an employee accurately concerning rights and duties pertaining to the exercise of legal remedies outside of the collective bargaining agreement. (California State Employees Association (Cohen) (1993) PERB Decision No. 980-S.) In the present case, it appears that information about the existence of EERA and PERB was an extracontractual matter outside the scope of the duty.

In order to state a prima facie violation of this duty, 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), PERB stated in part:

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.

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A union may exercise its discretion to determine how far to pursue a grievance in 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, p. 9.]

In the present case, it is not apparent from the charge what the Association could and should have done through the grievance process since January 5, 1995. Specifically, it is not apparent what you requested the Association to do, how the Association responded to any request, and what the contractual basis for any grievance would have been. Moreover, it is not apparent how the Association's grievance-related conduct was arbitrary, discriminatory or in bad faith.

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 September 25, 1995, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3542.

Sincerely,

Thomas J. Allen
Regional Attorney