

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



GWENDOLYN DAVISON,)
)
 Charging Party,) Case No. S-CO-361
)
 v.) PERB Decision No. 1162
)
 CALIFORNIA SCHOOL EMPLOYEES)
 ASSOCIATION,) June 26, 1996
)
 Respondent.)
 _____)

Appearances; Gwendolyn Davison, on her own behalf; Victoria Li for California School Employees Association.

Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (Board) on appeal from a Board agent's dismissal (attached) of Gwendolyn Davison's (Davison) unfair practice charge. As amended, the charge alleged that the California School Employees Association (Association) violated section 3543.6 of the Educational Employment Relations Act (EERA)¹ by

¹EERA is codified at Government Code section 3540 et seq. EERA section 3543.6 provides:

It shall be unlawful for an employee organization to:

(a) Cause or attempt to cause a public school employer to violate Section 3543.5.

(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.

failing to adequately represent its African American Membership in the Stockton Unified School District.

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

ORDER

The unfair practice charge in Case No. S-CO-361 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Johnson joined in this Decision.

(c) Refuse or fail to meet and negotiate in good faith with a public school employer of any of the employees of which it is the exclusive representative.

(d) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

PUBLIC EMPLOYMENT RELATIONS BOARD



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



February 26, 1996

Gwendolyn Davison

Re: Gwendolyn Davison v. California School Employees Association
Unfair Practice Charge No. S-CO-361

DISMISSAL LETTER

Dear Ms. Davison:

You filed the above-referenced charge on September 25, 1995, alleging a violation of the Educational Employment Relations Act. In the charge, you allege that the California School Employees Association (CSEA) has failed to meet its duty of fair representation.

I indicated to you, in my attached letter dated November 15, 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 November 22, 1995, the charge would be dismissed. On November 17, 1995, we discussed the charge and you were granted an extension of time to amend.

You filed an amended charge on November 28, 1995, which was again amended on December 8, 1995. In your amended charge you again submit material regarding custodian, Anthony Stovall, who disagreed with a March 1995 assessment by his supervisor that he was not properly performing his duties. The supervisor is also a job steward. That steward, Joe Cruz, was also unavailable for a March 7, 1995, predisciplinary conference involving Lamar Ivy. You attended the conference to assist Ivy. There is no indication that there was an attempt to reschedule the meeting or that your assistance as local union vice-president was insufficient. Brian Caldeira asked Labor Relations Representative, Richard Simms, to look into allegations of poor representation made by Stovall. You also attach information which indicates that CSEA Area Director, Karen Gardner, met with you and several other local union members to discuss issues which included replacing Cruz' as steward.

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Attachment 1 to your amended charge contains a list of employees whom you allege were not represented fairly and dates upon which they were not properly represented. The list notes that the incidents of improper representation did not occur in the six months prior to the filing of the charge. Attachment 2 of your amended charge contains signatures of local union members who allege that the membership of Chapter 318 is not being represented fairly. With neither Attachment 1 or 2 is there any information about specific cases wherein the local chapter is failing to represent individuals properly. Attachment 3 of your charge contains two letters to you from individuals. One individual is unhappy with current union leadership and the other one appears to be unhappy with the fact that she has not been reclassified.

In my letter of November 15, 1995, I explained to you the duty of fair representation and set forth how a charging party must demonstrate that a union has violated its duty of fair representation in grievance processing. We discussed this matter on November 17, 1995. As I stated in my prior letter, the employee must show sufficient facts indicating how or in what manner the exclusive representative's actions are without a rational basis or devoid of honest judgement. (Reed District Teachers Association (1983) PERB Decision No. 332) The facts which you have set forth in your amended charge are insufficient to show that the Union has acted without a rational basis or in bad faith in representing any specific members of the bargaining unit. Accordingly, for the reasons set forth in my letter of November 15, 1995, and this letter, your charge must be 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. (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:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

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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.)

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: Victoria Li

PUBLIC EMPLOYMENT RELATIONS BOARD



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



November 15, 1995

Gwendolyn Davison

Re: Gwendolyn Davison v. California School Employees Association
Unfair Practice Charge No. S-CO-361

WARNING LETTER

Dear Ms. Davison:

You filed the above-referenced charge on September 25, 1995 alleging a violation of the Educational Employment Relations Act. It appears that you specifically allege the Union has failed to meet its duty of fair representation.

Your charge reveals that you are the first vice-president for the California School Employees Association, Chapter 318 (CSEA). You are a desegregation technician in the Stockton Unified School District and CSEA is your exclusive representative. You allege that the Union has excluded you from all committees except the executive board and that there are no African-American representatives on any of the committees except for the entertainment committee. Nor were you selected to go to the annual conference. You further allege that "Non-feasance by the chapter president is a constant obstacle when it comes to pertinent issues of importance to the membership" and you state that this non-feasance particularly expresses itself in the representation of African-American classified employees. You contend that other procedures by the Union with regard to meetings and protocol and the control of expenditures are improper. You attached documents to your charge which appear to contain complaints of members that they are not receiving fair representation by CSEA.¹ Attached to the charge, you have also supplied several documents involving workplace problems of Anthony Stovall although it is not clear how it would appear that you are alleging that Mr. Stovall was not appropriately represented.

Breach of the duty of fair representation occurs when a union's conduct towards a member of the bargaining unit is "arbitrary, discriminatory or in bad faith." (Rocklin Teachers Professional

¹There is a two-page document which begins with "we have purposely been excluded" and ends with "have not been called upon to approve any of the" which appears to be incomplete and you may have intended to attach another page which we have not received.

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Association (1980) PERB Dec. No. 124.) The duty of fair representation does not extend to activities which are strictly internal union matters and which do not substantially impact the relationship between the employee and employer. (Los Angeles Community College District (Kimmitt) (1979) PERB Dec. No. 106.) With respect to those matters which you have alleged in your charge are improper committee assignments, protocol, etc. by the Union, it would appear that they are internal union matters and do not state a violation of the Educational Employment Relations Act.

In California State Employees Association (O'Connell) (1988) PERB Dec. No. 753-H, the Board found that a union might be guilty of illegal discrimination if its actions were motivated by a charging party's protected activity. However, your charge fails to show that you engaged in protected activity or that the Union was motivated to unlawfully take action against you.

A union does owe an employee a duty of fair representation in grievance processing. However, the employee must show sufficient facts indicating how or in what manner the exclusive representative's actions are without a rational basis or devoid of honest judgment. (Reed District Teachers Association (1983) PERB Dec. No. 332.) With regard to the information you have provided regarding the representation of Anthony Stovall and others, there are insufficient facts to demonstrate that the Union has acted without a rational basis or in bad faith. Accordingly, this allegation must be dismissed.

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 November 22, 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