STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ANNETTE M. DEGLOW,	)	
	)	
Charging Party,	)	Case No. SA-CO-383
	)	
v.	)	PERB Decision No. 1238
	)	
LOS RIOS COLLEGE FEDERATION OF TEACHERS/CFT/AFT/LOCAL 2279,	)	December 2, 1997
	)	
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 Dyer, Amador and Jackson, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (Board) on appeal from a Board agent's dismissal (attached) of Annette M. Deglow's (Deglow) unfair practice charge. As amended, Deglow's charge alleges that the Los Rios College Federation of Teachers/CFT/AFT/Local 2279 (Federation) breached its duty of fair representation in violation of sections 3544.9 and 3543.6(a) of the Educational Employment Relations Act (EERA) and discriminated against her in violation of EERA section 3543.6(b).[1]

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[1]EERA is codified at Government Code section 3540 et seq. EERA section 3543.6 provides, in relevant part:

> It shall be unlawful for an employee organization to:
>
> (a) Cause or attempt to cause a public school employer to violate Section 3543.5.

The Board has reviewed the entire record in this case, including Deglow's original and amendments to the unfair practice charge, the warning and dismissal letters, Deglow's appeal, and the Federation's response thereto. The Board finds the warning and dismissal letters to be free from prejudicial error and adopts them as the decision of the Board itself, consistent with the following discussion.

DISCUSSION

The Board finds that an award of litigation costs is not appropriate in this case. Accordingly, the Board reverses the Board agent's award of costs.

ORDER

The unfair practice charge in Case No. SA-CO-383 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Amador and Jackson joined in this Decision.

> (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.

EERA section 3544.9 provides:

> 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.

STATE OF CALIFORNIA PETE WILSON, *Governor*

PUBLIC EMPLOYMENT RELATIONS BOARD

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

May 16, 1997

Annette M. Deglow

Re: NOTICE OF DISMISSAL AND REFUSAL TO ISSUE COMPLAINT
RULING ON REQUEST FOR SANCTIONS
Annette M. Deglow v. Los Rios College Federation of Teachers/CFT/AFT/Local 2279
Unfair Practice Charge No. SA-CO-383

Dear Ms. Deglow:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on January 6, 1997, and amended on January 21 and February 11, 1997. Your charge alleges that the Los Rios College Federation of Teachers/CFT/AFT/Local 2279 (Federation or Respondent) breached its duty of fair representation (DFR) in violation of Government Code sections 3544.9 and 3543.6(a) and discriminated against you in violation of Government Code section 3543.6(a).

I indicated to you, in my attached letter dated February 28, 1997, 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 March 7, 1997, the charge would be dismissed.

Your subsequent request for additional time in which to amend or withdraw the charge was granted, and your Third Amended Charge was filed on March 20, 1997.

Your most recent amendment, however, merely restates facts previously alleged and largely consists of conclusions of law and legal argument, and does not include any new factual allegations in support of your charge. Two arguments raised by the latest amendment bear further discussion here.

First, you cite past actions of the Federation where they filed grievances which they acknowledged were not technically grievable in order to create a forum for problem resolution. You argue that, since the Federation was willing to file an admittedly unmeritorious grievance before, its refusal to do so later is proof that they are acting in a manner that is arbitrary, capricious or discriminatory.

This argument is unpersuasive. As discussed in my February 28, 1997 letter, the Federation has previously refused to pursue a grievance on your behalf over the issue of your hire date, you have alleged this conduct breached the duty of fair representation, and the Board has found in favor of the Federation. In this light, the Federation's latest refusal to represent you over the same issue does not, on its face, appear arbitrary or without a rational basis.

Second, you argue that the Federation has engaged in a pattern of conduct which proves their decision not to represent you arose out of an unlawful animus, under the standard set forth in Novato Unified School District (1982) PERB Decision No. 210 (Novato). This contention rests on your well-documented protected activity and the Federation's knowledge of same. The "historical record" which you believe establishes the Federation's animus includes contractual agreements they entered into with your employer in 1980 and 1986, and in February 1997,[1] as well as the Federation's public criticism of your frequent filing of charges against them and their request that the Board impose sanctions on you because of the frequency with which you file (unsuccessful) charges against them.

This argument, too, is unpersuasive. Though Novato was not cited in my February 26, 1997 letter, the analysis of your charge in that letter includes consideration of whether the factual allegations establish that the Federation denied you representation for discriminatory reasons. For all the reasons set forth in that letter, the conclusion here is that a prima facie case of discrimination has not been established. I am unaware of any legal authority for the proposition that a party acts in violation of the Act when it asks the Board to sanction another party. The other "historical record" events cited, except for the contract amendment which occurred two months after the Federation declined to represent you, have been considered by the Board in earlier cases.

Therefore, I am dismissing the charge based on the facts and reasons discussed above as well as those contained in my February 28, 1997 letter.

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[1]This latter contract amendment is itself at issue in Unfair Practice Charge No. SA-CO-385, dismissed on April 24, 1997.

Request for Sanctions

On March 27, 1997, I wrote to you and the Federation concerning the Federation's request that PERB impose sanctions and award litigation expenses to the Federation because of your filing of the instant charge and a parallel unfair practice charge against the Federation (SA-CO-382). My March 27 letter afforded both parties an opportunity to file argument on the issue of sanctions, and the Federation was further directed to specify the attorney fees and claims which it claimed should be awarded as sanctions. Following extensions of time requested by both parties, responses to my March 27 letter were filed on April 29, 1997.[2]

The Federation's case for sanctions is premised on warnings issued by the Board itself in three earlier cases: Los Rios College Federation of Teachers (Deglow) (1996) PERB Decision No. 1133, Los Rios College Federation of Teachers (Deglow) (1996) PERB Decision No. 1137, and Los Rios College Federation of Teachers (Deglow) (1996) PERB Decision No. 114 0. The Federation notes that the two current charges concern the Federation's conduct in representing (or refusing to represent) you over issues of longevity pay and hire date. The Federation further notes that representation over longevity pay was the subject of five previous charges, and representation over hire date was the subject of three earlier charges. The Federation concludes that filing of the two instant charges constitutes "pursuit of similar charges based on essentially the same circumstances," which the Board cautioned may lead to the imposition of sanctions. (Los Rios College Federation of Teachers (Deglow) (1996) PERB Decision No. 1133.)

The Federation's response included statements showing the attorney fees and costs incurred by the Federation in these matters totaled $4,419.99, including attorney fees of $4,280.25 and costs of $139.74.

You argue that sanctions are unwarranted because you attempted to research the issues in your cases, filed a timely charge and acted in good faith. You cite Chula Vista City School District (1982) PERB Decision No. 256 as authority for the proposition

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[2]The due date for submission of argument was confirmed by letter dated April 15, 1997. That letter further advised that requests for responsive argument would be entertained, but neither party requested an opportunity to file additional argument.

that sanctions should not be awarded where a party acts in good faith and raises issues which are of "debatable" merit.

Your argument restates your belief that a complaint should issue in both charges and reviews the history, since 1979, of your attempts to correct your employment conditions.

The Board enunciated the standard for an award of litigation expenses as follows in Los Angeles Unified School District/California School Employees Association (Watts) (1982) PERB Decision No. 181a (LAUSD).

> The Board notes that [Complainant] Mr. Watts has repeatedly filed complaints which are virtually identical in content to this despite the Board's patient and adverse rulings. [Citations omitted.]
>
> Mr. Watts' repeated raising of such nonmeritorious complaints abuse Board processes and wastes State resources. Further, respondents must necessarily incur expenses in time, effort and money in continually defending against the same charges. Accordingly, the Board sees fit to order that Mr. Watts cease and desist from filing complaints which merely raise facts and questions of law which the Board has already fully considered. Further, if such complaints are filed in the future, the Board will consider the possibility of assessing Mr. Watts any litigation expenses incurred by a respondent while trying to defend against such actions.

The Board later awarded costs and fees against the complainant warned in LAUSD, writing

> The Board further concludes that Watts' complaint is vexatious and frivolous and defies the Board's Order in [LAUSD], in which we ordered Watts to cease and desist from filing complaints that abuse the administrative processes of this Board. This case represents one of a number of frivolous complaints and appeals filed by Watts since that Order. Accordingly, we shall once again order Watts to cease and desist from such conduct and, in addition, shall order that

> Watts be assessed quantifiable costs, including reasonable attorneys' fees, incurred by the [respondent]. (United Professors of California (Watts) (1984) PERB Decision No. 398-H.)

As cited by the Federation, the Board itself first warned you against the repeated filing of similar charges in Los Rios College Federation of Teachers (Deglow) (1996) PERB Decision No. 1133. The Board in that case declined to award litigation expenses, as follows:

> [T]he Board is reluctant to order the payment of litigation expenses by employees who are representing themselves in PERB proceedings, because to do so might tend to discourage the legitimate pursuit of unfair practice charges. The charging party here, however, while representing herself, has extensive experience in PERB's unfair practice charge process. The repeated presentation of charges based on circumstances which have been considered by the Board in related cases previously suggests an abuse of that process.
>
> On balance, the Board concludes that litigation expenses should not be awarded to the Federation in this case. However, the Board cautions Deglow that pursuit of similar charges based on essentially the same circumstances presented by this case may be considered an abuse of PERB's process in the future.

In Los Rios College Federation of Teachers, CFT/AFT Local 2279 (Deglow) (1996) PERB Decision No. 1137, the Board "reaffirmed its recent warning" to you while denying a request for sanctions.

In Los Rios College Federation of Teachers, CFT/AFT Local 2279 (Deglow) (1996) PERB Decision No. 1140, the Board again warned you, writing

> The Board declines to sanction Deglow in this case primarily because the warnings in PERB Decision No. 1133 and PERB Decision No. 1137 were recently issued, after the unfair practice charges in the present case had been filed.

> The Board hereby reaffirms the warnings in those cases and wishes to remind Deglow that the Board will award attorneys' fees and 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.) The frequency and number of unsuccessful charges Deglow has filed at PERB indicate that she is approaching the standard in the cited cases whereby sanctions are appropriate. [Emphasis added.]

The issues raised by you in the charge dismissed by the Board in Los Rios College Federation of Teachers (Deglow) (1996) PERB Decision No. 1133 included longevity pay and hire date, the same two issues raised by the two instant charges. For the reasons set forth above and in the attached Warning Letter, I have concluded that both charges fail to state a prima facie case of a violation by the Federation of the duty of fair representation. Under these circumstances, and in consideration of the progressively sterner warnings by the Board itself in earlier cases found to lack merit, it is appropriate to award reasonable litigation expenses to the Federation.

Accordingly, you are hereby reminded of the Board's prior admonition to cease and desist from filing unfair practice charges which are "based on essentially the same circumstances presented" by earlier charges, and you are ordered to pay to the Federation its quantifiable costs incurred in this matter, not including attorney fees.

Attorney fees are not assessed in this matter for two reasons. First, this is the first instance where sanctions have been ordered, and it is to be hoped that the reiteration of the cease and desist order and the assessment of costs will be sufficient to deter the filing of similar charges in the future. Second, the determination here is that an award of attorney fees would not be reasonable in this case, since the Federation was not required by PERB regulations to respond to the charges. The only response required by PERB in these matters was the submission

relating to the Federation's affirmative request for an award of sanctions.[3] The amount thus assessed to Deglow is $139.74.[4]

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

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.

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[3]The authority to award attorney fees and/or costs is presumed from PERB precedent and Government Code section 3541.3, subsections (i) and (n). However, notice is taken of the ruling of the California Supreme Court in Sam Andrews' Sons v. Agricultural Labor Relations Board (1988) 47 Cal.3d 157 [253 Cal.Rptr. 30; 763 P.2d 881].

[4]This amount encompasses the cumulative effect of the orders in SA-CO-382 and SA-CO-383.

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

By
Les Chisholm
Regional Director

Attachment

cc: Adam H. Birnhak

STATE OF CALIFORNIA PETE WILSON, *Governor*

PUBLIC EMPLOYMENT RELATIONS BOARD

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

February 28, 1997

Annette M. Deglow

Re: WARNING LETTER
Annette M. Deglow v. Los Rios College Federation of Teachers/CFT/AFT/Local 2279
Unfair Practice Charge No. SA-CO-383

Dear Ms. Deglow:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on January 6, 1997, and amended on January 21 and February 11, 1997. Your charge alleges that the Los Rios College Federation of Teachers/CFT/AFT/Local 2279 (Federation or Respondent) breached its duty of fair representation (DFR) in violation of Government Code sections 3544.9 and 3543.6(a).

Investigation of this charge revealed the following pertinent information. You are employed by the Los Rios Community College District (District) as a part-time, tenured-track (regular) instructor, and your position is included in the bargaining unit exclusively represented by the Federation. You were first employed by the District in July 1965, but were employed prior to that by the District's predecessor (Sacramento City Unified School District). You are an active member of a competing employee organization (Los Rios Teachers Association), which previously attempted a decertification of the Federation.[1]

At the heart of the current charge is a dispute of long-standing over your correct start (or seniority) date with the District. In 1978, the District indicated it would "accept your affidavit with the date of September 11, 1962 as your first day of employment with the District"[2] [Footnote in original omitted.] even though Sacramento City Unified School District had indicated your date of hire was July 16, 1964.

[1]The most recent decertification election involving the two organizations was in June 1987, however.

[2]You actually contend that the correct date is September 7, 1962.

In 1981, the District assigned you a number (371) on the Certificated Employment Register[3] using a seniority date of September 11, 1964 (not September 7 or 11, 1962, and not July 16, 1964). You filed a grievance over this issue in 1982, but the Federation declined to process the grievance and the date was not changed.

The seniority date issue has been the subject of more than one grievance since 1982, and has also been the subject of prior unfair practice charge litigation, including Unfair Practice Charge No. SA-CO-314. The record before the Board in that case included an "attorney-client" letter prepared by Katherine J. Thompson for the Federation analyzing, inter alia, your seniority date claim. The letter concluded in part that the District had misinterpreted and/or misapplied applicable statutory provisions and that your seniority date should be corrected. The Federation's executive director testified at the hearing in this matter that the decision not to pursue the grievance was influenced by the perceived likelihood that the District's board would reject any favorable settlement or award due to the influence of Sue Shelley, the former general counsel for the District.

However, based on the entire record, the Board held in Los Rios College Federation of Teachers (Deglow) (1996) PERB Decision No. 1133 that the Federation had not breached its duty of fair representation by refusing to take your seniority date grievance to a board of review hearing. The Board's decision includes the following discussion:

> Despite Deglow's assertion that her grievances against the District are well-founded, decisions by the Federation not to pursue them are not in and of themselves unlawful. Deglow must show that the Federation's actions concerning these grievances were without a rational basis or devoid of honest judgment. Deglow has failed

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[3]The current written agreement between the Federation and District, in Article 6 - Seniority, provides that the District shall maintain a certificated register and assign a seniority number to each member of the bargaining unit who has re-employment rights. Numbers are assigned "according to provisions in the Education Code" and "[l]ower numbers indicate earlier hiring dates" (sub-section 6.2). Seniority is referenced by Article 5 of the agreement concerning such matters as involuntary reassignment, reductions in force and recall rights.

> to do so and, therefore, her exceptions are rejected.

In June 1996, the Federation and District negotiated a successor agreement which expires on June 30, 1999. The new agreement includes in Article 2, Section 2.10.3 the following language:

> Effective July 1, 1994, a regular full-time tenured or tenure track faculty member who transfers from another employee unit of the [District], the related cumulative years of regular paid service credit which was earned by the employee under another unit or collective bargaining contract shall be retained. Cumulative years of qualifying service as defined in each of the collective bargaining agreements with [the District] shall be combined with qualifying faculty service earned as provided in this contract. The increase in salary for the longevity factor shall occur only at the beginning of the following contract year or semester when the qualifying years of service are completed.

On November 12, 1996, you contacted the Federation, advised you would file a grievance relating to your seniority date, asked that a grievance number be assigned and informed the Federation that you were requesting representation. The grievance was assigned number 5-F96 and filed, and you faxed a copy of the grievance to the Federation with a letter requesting representation.

On November 15, 1996, the Federation informed you that they had decided not to represent you concerning Grievance 5-F96. The Federation explained its decision as follows:

> This decision is based on the belief that, as far as we can see, the issues you raise in the two grievances[4] have been the subject of prior grievances the [Federation] did not pursue. It is the Federation's belief that nothing material has changed since these issues were last raised.

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[4]The second grievance referred to by the Federation is 4-F96, and the Federation's refusal to represent you on that grievance is the subject of Unfair Practice Charge No. SA-CO-382.

The Federation's letter added that the decision would be reconsidered if you could "demonstrate material changes from the last time you grieved these issues."

There is no evidence that you responded directly to the Federation after receipt of their letter, but through the charge you contend that "material changes" have occurred since the seniority date issue was last grieved, including the appointment of a new District general counsel, replacing Sue Shelley, in June 1994; the appointment of a new District chancellor in September 1996; and the installation of three newly-elected District board members in December 1996.

Discussion

In order to state a prima facie case involving a breach of the duty of fair representation, facts must be alleged in the charge indicating how and in what manner the Federation refused to process a meritorious grievance or otherwise fulfill its duty for arbitrary, discriminatory or bad faith reasons. In United Teachers of Los Angeles (Collins) (1982) PERB Decision No. 258, the Board 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.

In order to state a prima facie case of arbitrary conduct violative of 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. See also Los Rios College Federation of Teachers (Baker et. al.) (1991) PERB Decision No. 877, Los Rios College Federation of Teachers (Violett) (1991) PERB Decision No. 889, and San Diego Teachers Association (1991) PERB Decision No. 902.)

It is, further, the charging party's burden to show how an exclusive representative has abused its discretion. (United Teachers of Los Angeles (Vigil) (1992) PERB Decision No. 934.) The "considerable discretion" accorded an exclusive representative "includes the exclusive representative's ability to decide in good faith that even a meritorious employee grievance should not be pursued." (Los Rios College Federation of Teachers (Deglow) (1996) PERB Decision No. 1133, citing United Teachers of Los Angeles (Clark) (1990) PERB Decision No. 796.)

Your filing of the most recent seniority date grievance was based on the amended language of Article 2, Section 2.10.3 and the "material changes" in key District personnel (general counsel, chancellor and board of trustees members). The Federation responded initially that it disagreed that any "material changes" had transpired and declined to represent you because they believe your grievance lacks merit. The Federation, in responding to the various amendments to this charge and those in SA-CO-382, has elaborated on its reasons for not believing the language of Article 2, Section 2.10.3 applies to your situation.

The analysis required here is not whether your grievance has merit. The issue raised by your charge is whether the Federation's decision declining to advance your grievance lacks a rational basis. (See Reed District Teachers Association. CTA/NEA (Reyes), supra, and like cases cited above.)

Your position emphasizes two key points: (1) The Federation's earlier reliance on the "Sue Shelley factor" in determining not to proceed with your grievances, and the fact that Shelley is no longer with the District, requires finding their most recent decision not to represent you lacks a rational basis; and (2) the Federation's swift response denying your request is itself evidence they failed to give it fair or honest consideration.

The first prong of this argument, as summarized above, relies heavily on your selective quotation of the testimony of Robert Perrone, the Federation's executive director, from the hearing in SA-CO-314. A review of the complete transcript of that proceeding reveals, however, that the portions quoted are presented somewhat out of context. Perrone, prior to talking about the role Sue Shelley might play in resolution of the issues, first testified that the Federation

> concluded that based on the opinion of our attorney, that the grievances were not tenable as grievances as violations of the

> Collective Bargaining Agreement. [Reporter's Transcript, Volume III, page 52.]

The Federation president had earlier in the hearing given similar testimony as to the conclusion drawn on the advice of the attorney.[5] In both cases, the witnesses were referring to the same "attorney-client" letter which your charge cites.

Perrone continued his testimony by describing how the Federation, despite the conclusion that the grievances were not tenable, had an interest in pursuing the issues in them with the District, but determined to await the retirement of Sue Shelley.

The only factual allegation in your charge, apart from those describing your protected activity, which addresses discriminatory motive on the part of the Federation concerns the Federation's publication of articles in its internal publications which "openly, repeatedly and notoriously . . . express its hostility and animus toward Deglow because of her exercise of EERA rights." This allegation references five Federation publications which have themselves been the subject of earlier unfair practice charges. Several of these same publications were considered by the Board in Los Rios College Federation of Teachers, CFT/AFT Local 2279 (Deglow) (1996) PERB Decision No. 1140. The Board dismissed your charges in that decision under a DFR analysis, and reaffirmed its earlier warnings to you[6] that you were "approaching the standard . . . whereby sanctions are appropriate" based on the frequency and number of unsuccessful charges you have filed. (Ibid.) Another unfair practice charge (SA-CO-366), also based on articles referenced by the instant charge, was withdrawn shortly after issuance of PERB Decision No. 1140. Under these circumstances, I am precluded from basing a finding that the Federation breached its DFR on these same articles.

Given the entire set of circumstances and history involved in your request that the Federation represent you on a new seniority date grievance, the facts -- including the fact that they responded without delay --do not establish prima facie evidence that the Federation's conduct was arbitrary, capricious or discriminatory, or, in other words, "without a rational basis or devoid of honest judgment." (Ibid.)

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[5]Reporter's Transcript, Volume II, page 183.

[6]The Board cited Los Rios College Federation of Teachers (Deglow) (1996) PERB Decision No. 1133 and Los Rios College Federation of Teachers (Deglow) (1996) PERB Decision No. 1137.

The Board's earlier decision in Los Rios College Federation of Teachers (Deglow) (1996) PERB Decision No. 1133 sets forth an additional reason why the instant charge must be dismissed. In that decision, the Board concluded that the doctrine of collateral estoppel bars you from using a seniority date-grievance to support allegations the Federation has breached the duty of fair representation.

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 Third 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 March 7, 1997. I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198, extension 359.

Sincerely,

Les Chisholm
Regional Director