

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



KATHERINE MARY PATTERSON,)
)
 Charging Party,) Case No. SF-CO-527
)
 v.) PERB Decision No. 1254
)
 SERVICE EMPLOYEES INTERNATIONAL) March 20, 1998
 UNION, LOCAL 790,)
)
 Respondent.)
 _____)

Appearance; Katherine Mary Patterson, on her own behalf.

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (Board) on appeal from a Board agent's dismissal (attached) of Katherine Mary Patterson's (Patterson) unfair practice charge. As amended, the charge alleged that the Service Employees International Union, Local 790 breached its duty of fair representation in violation of sections 3543.6(a) and 3544.9 of the Educational Employment Relations Act (EERA) and discriminated against her in violation of section 3543.6(b).¹

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

(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

The Board has reviewed the entire record in this case, including the original and amended unfair practice charge, the warning and dismissal letters, and Patterson's appeal. The Board finds the 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. SF-CO-527 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Amador joined in this Decision.

employees because of their exercise of rights guaranteed by this chapter.

Section 3544.9 provides, in relevant part:

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.

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 439-6940



December 18, 1997

Katherine Mary Patterson

Re: **DISMISSAL OF CHARGE/REFUSAL TO ISSUE COMPLAINT**

Katherine Mary Patterson v. Service Employees International
Union. Local 790

Unfair Practice Charge No. SF-CO-527

Dear Ms. Patterson:

The above-referenced unfair practice charge, filed September 3, 1997, alleges the Service Employees International Union, Local 790 (SEIU or Local 790) breached its duty of fair representation. This conduct is alleged to violate Government Code section 3543.6(a) of the Educational Employment Relations Act (EERA or Act).

I indicated to you, in my attached letter dated November 25, 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 December 2, 1997, the charge would be dismissed. I later extended this deadline until December 4, 1997.

On December 3, 1997, I received a first amended charge. The amended charge reiterates the original allegation and adds the following. The charge contends SEIU failed to fairly represent you with regard to your grievance filed in April, 1996. In support of this allegation, you have provided the following facts.

In April, 1996, Roosevelt Middle School Principal, Charles Corsiglia, transferred you to the counselling office. Charging Party reported this transfer to SEIU representative, Pattie Tamura. On April 12, 1996, Ms. Tamura sent a letter to Assistant Superintendent, Cynthia LeBlanc, regarding Charging Party's transfer. On that same date, Ms. Tamura filed a grievance

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regarding Charging Party's transfer. In the two weeks following the filing of the grievance, Charging Party attempted, on numerous occasions, to speak with Ms. Tamura regarding the grievance. Apparently, Ms. Tamura did not respond to any of Charging Party's messages. On April 30, 1996, Charging Party sent a letter to Ms. Tamura regarding Ms. Tamura's failure to respond to Charging Party's messages. Ms. Tamura did not respond to this letter.

On May 28, 1996, Principal Corsiglia gave Charging Party an "Unacceptable" performance evaluation. On June 14, 1996, Charging Party requested Principal Corsiglia meet with her and Ms. Tamura regarding the performance evaluation. Principal Corsiglia refused to meet with you stating he had already discussed the matter with SEIU. On that same date, you sent a letter to Ms. Tamura and other SEIU representatives, regarding Principal Corsiglia's evaluation and your on-going grievance against him.

On July 2, 1996, Charging Party received a letter from SEIU Executive Director, Paul Varacalli. Mr. Varacalli acknowledged receipt of your letter and informed you that he was assigning Staff Manager, LaWanna Preston, to investigate the matter. Ms. Preston was told to contact you when she finished her investigation. Ms. Preston failed to return any of Charging Party's phone messages during the next few months, and Charging Party did not receive any correspondence from SEIU.

On October 1, 1996, Charging Party spoke with Ms. Preston over the telephone and faxed Ms. Preston copies of relevant documents. On October 4, and October 7, 1996, Charging Party requested meetings with Ms. Preston. On October 11, 1996, Charging Party met with Ms. Preston to discuss the grievance and SEIU's alleged failure to represent Charging Party. After listening to Charging Party's concerns, Ms. Preston suggested the matter be handled by her supervisor, Josie Mooney. Charging Party was introduced to Ms. Mooney and engaged in a brief conversation with Ms. Mooney regarding her concerns over SEIU's treatment of her grievance. Charging Party alleges Ms. Mooney was reluctant to discuss the matter and referred Charging Party back to Ms. Preston.

On October 16, 1996, Charging Party sent a letter to Mr. Varacalli regarding the October 11, 1996, meeting. In this letter, Charging Party requests Mr. Varacalli discuss the situation with Ms. Preston and urges SEIU to handle the matter promptly. On October 22, 1996, Charging Party sent another letter to Mr. Varacalli complaining about Ms. Mooney's failure to set up a meeting as promised, and SEIU's failure to provide her with any information regarding her grievance. On October 24,

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1996, Charging Party spoke with Ms. Mooney's assistant, Veronica McKissnick. Ms. McKissnick informed Charging Party that Ms. Mooney and Ms. Tamura had met regarding the grievance, and that a meeting between Charging Party, Ms. Tamura and Ms. Mooney would be scheduled at a later date. Ms. McKissnick did not call back to schedule this meeting. Also, on October 24, 1996, Ms. Tamura sent a letter to Associate Superintendent, Judith Kell, regarding the District's failure to respond to the grievance.

On October 30, 1996, Charging Party states she spoke with Ms. Preston, who informed her that the grievance was not filed "until recently." Ms. Preston also stated Ms. Tamura would be sending Charging Party the appropriate paperwork soon. On that same date, Charging Party sent a letter to Mr. Varacalli recounting her earlier conversation with Ms. Preston, and requesting Mr. Varacalli investigate the matter and meet with Charging Party on November 1, 1996. This meeting did not, however, take place.

In November, 1996, after receiving no assistance from SEIU shop stewards, Charging Party requested assistance from Ricardo Lopez, Hall of Justice Shop Steward. The charge does not explain Mr. Lopez's role in the union, however, other facts provided demonstrate Mr. Lopez is not affiliated with SEIU. On or about November 19, 1996, Charging Party spoke with Ms. Tamura, who informed her that the District had not yet processed the grievance and had yet to respond to SEIU's letter dated October 24, 1996. On November 22, 1996, Charging Party telephoned Ms. Tamura regarding another alleged discriminatory act against her. Ms. Tamura did not respond to Charging Party's messages.

On December 18, 1996, Charging Party sent Mr. Varacalli a letter regarding her affiliation with Mr. Lopez. The letter states in pertinent part:

In reference to your letter sent to Mr. Ricardo Lopez concerning his representing me as shop steward, I have elected, because of the lack of support that Local 790 has shown concerning my grievance, to utilize him as my shop steward and counsel. Mr. Lopez is cognizant of my issues with the Union. Therefore, I'm not interested in obtaining representation from a shop steward at the San Francisco Unified School District.

On January 7, 1997, Mr. Varacalli sent a letter to Charging Party in response to the above-quoted correspondence. Mr. Varacalli's letter states in relevant part:

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Be advised Brother Lopez cannot represent you in behalf of the Union as I have previously noted.

Because the Union has the duty of fair representation of all its members, any member who wishes to go beyond the established process and retain outside counsel must advise the Union, in writing, that the Union's responsibility for representation in a particular case is relieved.

Please advise if you continue to wish to retain outside counsel by following the steps noted above.

On January 11, 1997, Charging Party responded to Mr. Varacalli's letter as follows:

However, by you and your staff's inaction and failure to respond to my numerous requests (faxes, phone calls, and letters) for information concerning my grievance, and the inability to receive help when I asked other brothers and sisters in my chapter, there wasn't any alternative. Therefore, I rely on Mr. Ricardo Lopez as a resources because he has been cooperative, understanding, and thoughtful brother. [sic]

I find it very disappointing that you have taken the time to write me two personal letters which expressed a concern on who may represent me, while no action has been taken by you or your staff to resolve a grievance I filed more than 10 months earlier.

I am again requesting that the Union process my grievance, as soon as possible, in an aggressive and efficient manner.

Charging Party did not receive a response from Mr. Varacalli regarding this letter, nor has Charging Party received any assistance regarding her grievance from SEIU since November, 1996.

On April 18, 1997, Charging Party received a written reprimand from Assistant Principal Eldoris Cameron. Ms. Cameron cited Charging Party's failure to return to work on time, as the

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reasons for the reprimand. On April 25, 1997, Charging Party forwarded Ms. Cameron Charging Party's rebuttal to the reprimand. Copies of the reprimand and rebuttal were sent to Ms. Tamura.

On August 1, 1997, Charging Party spoke with SEIU representative Shirley Black, as Charging Party had yet to receive her assignment letter for the 1997-98 school year. Ms. Black apparently contacted Human Resource Manager, Elaine Lee, on that same date, and informed Charging Party that her position at Roosevelt Middle School was being eliminated. On August 5, 1997, Ms. Lee informed Charging Party of her new assignment in the Athletics Department. On August 8, 1997, Ms. Black met with Charging Party to discuss the reassignment.

Based on the above stated facts, the charge fails to state a prima facie case within PERB's jurisdiction, and is therefore dismissed.

Government Code section 3541.5(a)(1) prohibits the Board from issuing a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge. This limitations period is mandatory and constitutes a jurisdictional bar to charges filed outside the prescribed period. (University of California (1990) PERB Decision No. 826-H.)

With respect to duty of fair representation claims under 3544.9, the limitations period begins to run on the date the employee, in the exercise of reasonable diligence, knew or should have known that further assistance or response from the union was unlikely. (International Union of Operating Engineers, Local 501 (Reich) (1986) PERB Decision No. 591-H; Los Rios College Federation of Teachers (1991) PERB Decision No. 889.)

It appears from the facts provided that Charging Party knew or should have known of SEIU's alleged failure to represent her. Charging Party requested, in April, 1996, that SEIU file and pursue a grievance regarding Charging Party's transfer. From the outset, Charging Party alleges SEIU representatives were remiss in returning her telephone messages and failed to provide Charging Party with any information. Indeed, Charging Party alleges she did not receive any correspondence from SEIU until Mr. Varacalli's letter in July, 1996, nearly three months after the filing of the grievance and after several phone calls and letters from Charging Party. Mr. Varacalli assigned the matter to Ms. Preston, who allegedly also ignored Charging Party's requests for meetings and information until October, 1996, nearly three months after she was assigned to the matter. Additionally, on October 30, 1996, Charging Party asserts Ms. Preston informed

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her that SEIU had failed to file the grievance "until recently." Finally, Charging Party herself states SEIU's actions best in her letter on January 11, 1997, which constitutes the final communication between the parties regarding this grievance:

I find it very disappointing that you have taken the time to write me two personal letters which expressed a concern on who may represent me, while no action has been taken by you or your staff to resolve a grievance I filed more than 10 months earlier.

As this charge was filed on September 3, 1997, only matters occurring after March 3, 1997, can be considered. Facts provided by Charging Party demonstrate that Charging Party knew or should have known, as late as January 11, 1997, that SEIU was allegedly breaching its duty of fair representation. (See, Oakland Education Association (Freeman), (1994) PERB Decision No. 1057 (employee knew or should have known that union was refusing to process his grievance when, outside the limitations period, it failed to return his phone calls or reply to his correspondence).) Indeed, Charging Party's letters to Mr. Varacalli as early as October, 1996, demonstrate Charging Party knew of SEIU's lack of care or concern over the grievance. The fact that SEIU continues to refuse or mishandle the grievance does not start the limitations period anew. (California State Employees Association (Calloway), (1985) PERB Decision No. 497-S.) Acting with reasonable diligence, Charging Party knew or should have know early in the grievance process that SEIU was failing to process the grievance, and thus the charge falls outside PERB's jurisdiction and 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

By
Kristin L. Rosi
Regional Attorney

Attachment

cc: Pattie Tamura

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 439-6940



November 25, 1997

Katherine Mary Patterson

Re: **WARNING LETTER**

Katherine Mary Patterson v. Service Employees International
Union, Local 790
Unfair Practice Charge No. SF-CO-527

Dear Ms. Patterson:

The above-referenced unfair practice charge, filed September 3, 1997, alleges the Service Employees International Union, Local 790 (SEIU or Local 790) breached its duty of fair representation. This conduct is alleged to violate Government Code section 3543.6(a) of the Educational Employment Relations Act (EERA or Act).

Investigation of the charge revealed the following. You are currently employed by the San Francisco Unified School District (District) as a 1446 Secretary, and are exclusively represented by SEIU. SEIU and the District are parties to a collective bargaining agreement (Agreement) which expired on June 30, 1997.

The charge alleges SEIU filed a grievance on your behalf in April, 1996. The charge does not provide any details regarding this grievance. The charge further alleges that you have requested information from Local 790 regarding this grievance, and that Local 790 has refused to respond to your requests. The charge does not provide dates or times when the requests were made.

On November 24, 1997, I telephoned you and informed you that although I was aware of information regarding your allegations against SEIU through your filing of another unfair practice charge,¹ pertinent information regarding this charge must be sent as part of this charge, and served on SEIU, to be considered. As

¹ Unfair Practice Charge No. SF-CE-1956, filed against the District, which contains over 100 pages of narrative and exhibits.

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such information has not been served on SEIU, I am unable to consider it herein.

Based on the above stated facts, the charge as presently written, fails to state a prima facie case for the reasons stated below.

Charging Party has alleged that the exclusive representative denied Charging Party 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.) In order to state a prima facie violation of this section of EERA, Charging Party must show that the Association's conduct was arbitrary, discriminatory or in bad faith. In United Teachers of Los Angeles (Collins), the Public Employment Relations 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.
[Citations.]

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. (Emphasis added.)" [Reed District Teachers Association. CTA/NEA (Reyes) (1983) PERB Decision No. 332, p. 9, citing Rocklin Teachers Professional Association (Romero) (1980) PERB Decision No. 124.]

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As the charge presently fails to contain any facts demonstrating SEIU acted arbitrarily, discriminatorily or in bad faith, the charge fails to state a prima facie violation of the EERA.

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 December 2, 1997, I shall dismiss your charge. If you have any questions, please call me at (415) 439-6940.

Sincerely,

Kristin L. Rosi
Regional Attorney