

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CAROLYN TWYMAN,)
)
 Charging Party,) Case No. LA-CO-756
)
 v.) PERB Decision No. 1257
)
 VAL VERDE TEACHERS ASSOCIATION,) March 24, 1998
 CTA/NEA,)
)
 Respondent.)
 _____)

Appearance; Carolyn Twyman, on her own behalf.

Before Johnson, Amador and Jackson, Members.

DECISION

AMADOR, Member: This case comes before the Public Employment Relations Board (Board) on appeal from a Board agent's dismissal (attached) of Carolyn Twyman's (Twyman) unfair practice charge. Twyman's charge alleges that the Val Verde Teachers Association, CTA/NEA 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

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

Section 3543.6 provides, in relevant part:

It shall be unlawful for an employee organization to:

The Board has reviewed the entire record in this case, including the unfair practice charge, the warning and dismissal letters, and Twyman'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. LA-CO-756 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Johnson and Jackson joined in this Decision.

(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.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



December 24, 1997

Carolyn Ann Twyman
12041 Brixton Ct.
Moreno Valley, California 92557

Re: Carolyn Ann Twyman v. Val Verde Teachers Association,
CTA/NEA
Unfair Practice Charge No. LA-CO-756
DISMISSAL AND REFUSAL TO ISSUE COMPLAINT

Dear Ms. Twyman:

In this charge filed on December 4, 1997 (certified mail), you allege that the Val Verde Teachers Association, CTA/NEA (WTA or Association) violated the duty of fair representation in violation of Government Code section 3543.6 of the Educational Employment Relations Act (EERA).¹

I indicated to you, in my attached letter dated December 16, 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 23, 1997, the charge would be dismissed.

I have not received either an amended charge or a request for withdrawal. Therefore, I am dismissing the charge based on the facts and reasons contained in my December 16, 1997 letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, you may obtain a review of this dismissal of the charge by filing

¹Although you alleged that the Association also violated section 3519.5 of the Ralph C. Dills Act, and section 3571.1 of the Higher Education Employer-Employee Relations Act, as you were employed as a Counselor by the Val Verde Unified School District (Val Verde or District), I am considering this a matter falling only under the EERA.

LA-CO-756
Dismissal Letter
December 24, 1997

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.

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.)

LA-CO-756
Dismissal Letter
December 24, 1997

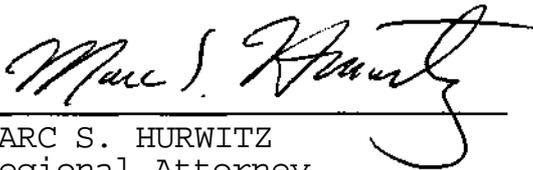
Final Date

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


MARC S. HURWITZ
Regional Attorney

Attachment

cc: Charles R. Gustafson, Staff Counsel

PUBLIC EMPLOYMENT RELATIONS BOARD



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



December 16, 1997

Carolyn Ann Twyman
12041 Brixton Ct.
Moreno Valley, California 92557

Re: Carolyn Ann Twyman v. Val Verde Teachers Association.
CTA/NEA
Unfair Practice Charge No. LA-CO-756
WARNING LETTER

Dear Ms. Twyman:

In this charge filed on December 4, 1997 (certified mail), you allege that the Val Verde Teachers Association, CTA/NEA (WTA or Association) violated the duty of fair representation in violation of Government Code section 3543.6 of the Educational Employment Relations Act (EERA).¹

The first page attached to your charge states as follows:

Please read attached documents. I had never been told I needed to file with the PERB board until September of 1997. I was recently informed that the charges stated in the "pre-lawsuit" letter of Suzy Moore, that I had to drop that cause of action because I hadn't filed with the PERB. Is this true? Can't you intervene or help?

My investigation and the charge revealed the following information. From 1992 until 1995, you served as a site representative, an Executive Board Member, and on the Negotiating Team for the WTA. In 1995, while you were pregnant, you were informed by the District that you would be transferred into a teaching position. Specifically, in May 1995, your Principal at Rancho Verde High School, Rob Nichols, advised you that he was not planning to have counselors at the high school next year.

¹Although you alleged that the Association also violated section 3519.5 of the Ralph C. Dills Act, and section 3571.1 of the Higher Education Employer-Employee Relations Act, as you were employed as a Counselor by the Val Verde Unified School District (Val Verde or District), I am considering this a matter falling only under the EERA.

You advised Gary Trout, President of the WTA, and other members of the Executive Board. But no action was taken. On or about June 1, 1995, you spoke to Tony Leon of the California Teachers Association (CTA) about this matter, and he advised you to contact the Department of Fair Employment and Housing (DFEH). He did not suggest that you contact the Public Employment Relations Board (PERB), nor did he file a grievance on your behalf. You filed a complaint at the DFEH in June 1995. In August 1995, you sought a one year leave of absence from the District, and took another counseling position at Lake Elsinore High School District (Lake Elsinore) during the 1995-96 school year.

In April 1996, you filed a second complaint with the DFEH, in part, for being displaced out of your position as a counselor. In July 1996, you filed another complaint because the District did not give you your job when it was your intention to return to your position. Your attorney, Suzy C. Moore, by letter to the District dated May 29, 1996, demanded, in order to avoid litigation, your reinstatement to your position as a Counselor, and elimination of negative materials from your file. In August 1996, you were informed by the District that you were placed at Vista Verde Middle School as a teacher in the on campus detention/suspension room.

In 1996, you kept Gary Trout advised about your situation. Trout did not think these was anything the union could do and in fact, the union took no action. In September 1996, (while you were still with Lake Elsinore), you requested another leave of absence from Val Verde, but your request was denied. You contacted Tony Leon of CTA. You feared the District could go after your credential if you did not resign from Val Verde. Mr. Leon recommended that you resign; and in September 1996, you did resign. At September 1996, you were aware that Val Verde kept two male counselors in their positions and had hired (you believe into your position) a new counselor, Mrs. Block, the wife of the new middle school principal.

You obtained a new attorney in 1996, Steven Morris. Having received one or more right to sue letters from DFEH, a lawsuit was filed against Val Verde in 1996 involving, among other things, sexual harassment, pregnancy and sex discrimination, and retaliation for union activities. By the letter dated November 20, 1997 to Lois Tinson, President, California Teachers Association in Burlingame, California, you expressed, in part, your dissatisfaction with the Association, and indicated that the union did not fulfill its duty of fair representation.

You advised me on December 11, 1997 that the issue of retaliation for union activity was deleted from your lawsuit (as you had not

previously filed a charge at PERB). You did not learn about PERB until September 1997.

Based on the above, the charge fails to state a prima facie case within PERB's jurisdiction. EERA section 3541.5(a)(1) provides that the Board shall not, "Issue 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." It is your burden, as the charging party to demonstrate that the charge has been timely filed. (See Tehachapi Unified School District (1993) PERB Decision No. 1024.)

In cases against the union, the 6 month statute for the duty of fair representation runs from the date the union assessed the merits of the case. See International Union of Operating Engineers, Local 501 (Reich) (1986) PERB Decision No. 591-H.

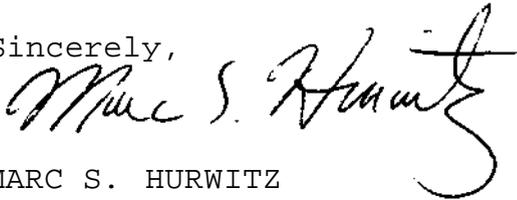
The above indicates that in 1995 and 1996, you discussed with the Association the adverse actions taken by Val Verde. You indicated that suggestions were made by the union, or it took no action on your behalf. You contacted Tony Leon of CTA as late as September 1996. You obtained his suggestions at that time. Thus, the 6 month statute of limitations ran out after March 1997. This charge was not filed until December 4, 1997, and is untimely. In other words, all allegations of unlawful conduct by the Association occurred more than 6 months before the charge was filed and are therefore being dismissed as untimely.

Your letter of dissatisfaction to CTA dated November 20, 1997 will not change this result; neither will your lack of knowledge about PERB or the EERA. See California State Employees Association (Darzins) (1985) PERB Decision No. 546-S, where the Board held that the 6 month period runs from the time the conduct is discovered, not from the date of the discovery of the legal significance of that conduct.

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 23, 1997, I

shall dismiss your charge. If you have any questions, please
call me at (213) 736-3543.

Sincerely,

A handwritten signature in cursive script that reads "Marc S. Hurwitz". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

MARC S. HURWITZ
Regional Attorney