

**STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD**

HOLMGEIR K. BRYNJOLFSSON,

Charging Party,

v.

TEAMSTERS LOCAL 572,

Respondent.

Case No. LA-CO-873-E

PERB Decision No. 1463

October 4, 2001

Appearance: Holmgeir K. Brynjolfsson, on his own behalf.

Before Amador, Baker and Whitehead, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (Board) on appeal by Holmgeir K. Brynjolfsson (Brynjolfsson) of a Board agent's dismissal (attached) of his unfair practice charge. The charge alleged that the Teamsters Local 572 violated the right to fair representation guaranteed by the Educational Employment Relations Act (EERA) section 3544.9 and thereby violated section 3543.6(b).<sup>1</sup>

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<sup>1</sup>EERA is codified at Government Code section 3540 et seq.

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(b) provides, in part that:

It shall be unlawful for an employee organization to:

The Board has reviewed the entire record in this case, including the original and amended unfair practice charges and attachments, the warning and dismissal letters, and Brynjolfsson's appeal. The Board finds the Board agent's dismissal letter to be free from prejudicial error and adopts it as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. LA-CO-873-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Amador and Baker joined in this Decision.

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(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.

## Dismissal Letter

May 1, 2001

Holmgeir Brynjolfsson  
3435 Waco Ave  
Simi Valley CA 93063

RE: Holmgeir Brynjolfsson v. Teamsters Local 572  
Unfair Practice Charge No. LA-CO-873  
DISMISSAL AND REFUSAL TO ISSUE A COMPLAINT

Dear Mr. Brynjolfsson:

In the above-referenced charge Holmgeir Brynjolfsson alleges the Teamsters Local 572 violated the Educational Employment Relations Act (EERA or Act) § 3543.6 by breaching its duty of fair representation. On or about April 3, 2001, I spoke with you regarding this charge.

I indicated to you, in my attached letter dated April 13, 2001, 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 April 23, 2001, the charge would be dismissed. I granted your request and extended that deadline to April 30, 2001.

On April 27, 2001, you filed by certified mail a letter and attachments addressing my warning letter.<sup>1</sup> The documents did not include a proof of service and thus it does not appear the documents were served on the Respondent.

In his April 27, 2001 letter, Brynjolfsson alleges the District violated: (1) Article 9, Section 1.3 of the CBA by requiring him to report at 2 pm rather than 2:30 pm; (2) Article 10, Section 1.0 of the CBA by failing to provide him with training; and (c)

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<sup>1</sup>The Charging Party provided the following documents: (1) an April 27, 2001 letter to PERB; (2) a January 13, 2000 memorandum indicating the Charging Party had been promoted and his hours were from 2:30 pm to 11:00 pm; (3) a blank, untitled form used by evaluators to explain below standard ratings on performance evaluations; (4) his February 23, 2000 evaluation; (5) his March 21, 2000 evaluation; and (6) the 1997-2001 collective bargaining agreement between the Teamsters and the Los Angeles Unified School District.

Article 10, Section 2.0 and 2.0.c by using the wrong form and failing to hold progress meetings and set performance goals. Brynjolfsson alleges the District's actions clearly violated the CBA, and therefore the Teamster's failure to pursue his grievance to binding arbitration violated his duty of fair representation.

The above-stated information fails to state a prima facie violation for the reasons that follow.

As stated in the warning letter, 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.

Taking the Charging Party's facts as true, as required by Mark West Union School District (1993) PERB Decision No. 1011, the District violated several contract provisions during its evaluation of Brynjolfsson. However, the exclusive representative's duty of fair representation only requires that it not act in an arbitrary, discriminatory or bad faith manner. The Teamsters may exercise their discretion in determining whether to pursue a grievance to arbitration. (American Federation of State, County and Municipal Employees (1999) PERB Decision No. 1321; United Teachers of Los Angeles (1998) PERB Decision No. 1289.)

Here, the Teamster's decided not pursue Brynjolfsson's grievance to arbitration based on the advice of its legal counsel. The collective bargaining agreement provides grievances challenging performance evaluations shall be limited to claims regarding the evaluation procedures. The warning letter indicated that the Teamster's decision not to pursue Brynjolfsson's grievance appeared to be based on a rational interpretation of the collective bargaining agreement and the arbitrator's authority. The warning letter also noted that the charge failed to provide facts demonstrating the Teamsters acted in an arbitrary, discriminatory or bad faith manner. The documents provided by the Charging Party on April 27, 2001 do not correct those deficiencies. Thus, the charge is 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 Regs., tit. 8,

sec. 32635(a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Cal. Code Regs., tit. 8, sec. 32135(a); see also Cal. Code Regs., tit. 8, sec. 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Cal. Code Regs., tit. 8, sec. 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, secs. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

The Board's address is:

Public Employment Relations Board  
Attention: Appeals Assistant  
1031 18th Street  
Sacramento, CA 95814-4174  
FAX: (916) 327-7960

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 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 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. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, sec. 32135(c).)

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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 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  
Tammy L. Samsel  
Regional Attorney

Attachment

cc: Jeffrey L. Cutler

## Warning Letter

April 13, 2001

Holmgeir Brynjolfsson  
3435 Waco Ave  
Simi Valley CA 93063

RE: Holmgeir Brynjolfsson v. Teamsters Local 572  
Unfair Practice Charge No. LA-CO-873  
WARNING LETTER

Dear Mr. Brynjolfsson:

In the above-referenced charge Holmgeir Brynjolfsson alleges the Teamsters Local 572 violated the Educational Employment Relations Act (EERA or Act) § 3543.6 by breaching its duty of fair representation. On or about April 3, 2001, I spoke with you regarding this charge. My investigation revealed the following information.

On January 17, 2000, Brynjolfsson became an Assistant Garage Supervisor at the Los Angeles Unified School District. That position is within the bargaining unit exclusively represented by the Teamsters. Brynjolfsson began a six-month probationary period in January 2000 and was supervised by Jack Rice.

Rice wrote Brynjolfsson tardy slips on three occasions. Brynjolfsson protested Rice's authority to issue the tardy slips. Brynjolfsson alleges Rice was angered by his protest and began a campaign of threats, and intimidation against him.

On March 1, 2000 Rice issued Brynjolfsson a preliminary performance evaluation which rated him below standard. In an attachment Rice listed specific reasons for the evaluation. Brynjolfsson wrote and attached a rebuttal statement. On March 24, 2000, Rice issued a Final Performance Evaluation rating Brynjolfsson's work as below standard. Brynjolfsson disagreed with the evaluation and spoke with Business Agent Margaret Villegas. Villegas agreed to file a grievance regarding the District's failure to follow the proper procedures.

The parties' 1997-2000 collective bargaining agreement has been extended on a day-to-day basis. Article X, Section 3.1 of the CBA states:

No grievance arising under this Article shall challenge the substantive objectives, standards, or criteria determined by the evaluator or the District, nor shall it contest the judgement of the evaluator.

Grievances concerning evaluations filed under Article V (Grievance Procedure) shall be limited to a claim that the procedures in Section 2.0 above, have not been followed.

On April 6, 2000 Villegas filed a grievance. Villegas told Brynjolfsson that he had a good case because the District had failed to follow the proper procedures. More specifically, the grievance indicated the District violated CBA sections regarding the use of conference memos, and the prescribed forms for evaluation purposes. Villegas and Brynjolfsson met with the District for a Step 1 meeting. Following the meeting Villegas told Brynjolfsson that the union would take the grievance to arbitration after the three-step process had been completed. The District denied the grievance at Step 1.

Villegas and Brynjolfsson also attended a Step 2 meeting. Following the meeting Villegas indicated that her boss felt confident that they could win in arbitration. Villegas also indicated that the union had not lost a case against the District.

On April 26, 2000, Rice issued a Second Final Evaluation rating Brynjolfsson's work below standard. Rice also indicated a Notice of Unsatisfactory Service would be issued. On May 15, 2000 Villegas filed a second grievance. Both grievances were consolidated for a December 8, 2000 Step 3 meeting.

On December 7, 2000, Villegas called Brynjolfsson and indicated that the union would not take the case to arbitration on the advice of their attorney. Villegas indicated that she had explained that there were clear violations of the contract, but that the attorney recommended the case not be brought to arbitration. The attorney advised Villegas that an arbitrator would not have the authority to extend the probationary period or overturn the evaluation. Villegas indicated she would attend the Step 3 meeting if Brynjolfsson wanted her to be there.

The District denied the grievances at the Step 3 meeting. Villegas also met with District Manager Alan Tomiyama to discuss Brynjolfsson's situation, but he refused to take action.

On May 10, 2000, the District issued a Notice of Unsatisfactory Service to Brynjolfsson and he was demoted to an Automotive Mechanic position. Brynjolfsson appealed this decision and the Personnel Commission ordered that Brynjolfsson be returned to the eligibility list for a supervisory position.

The above-stated information fails to state a prima facie violation for the reasons that follow.

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.]

In the instant charge Villegas filed two grievances on Brynjolfsson's behalf and represented him in several grievance meetings. Villegas also met with a District representative outside of the grievance process in an effort to help Brynjolfsson.

Villegas told the Charging Party that he had a meritorious grievance, and that the union would pursue the grievance to arbitration. However, after meeting with legal counsel, Villegas informed the Charging Party that the union would not pursue the grievance to arbitration. The parties' CBA indicates that only procedural irregularities, not the substantive allegations, can be the subject of a grievance. The Teamsters' decision not to pursue the grievance to arbitration appears to be based on that contract language. The Teamsters may exercise their discretion

in determining whether to pursue a grievance to arbitration. (American Federation of State, County and Municipal Employees (1999) PERB Decision No. 1321; United Teachers of Los Angeles (1998) PERB Decision No. 1289.) Here, the Teamsters decided not to pursue a grievance to arbitration based on its determination that despite procedural deficiencies the arbitrator would not have the authority to extend the probationary period or overturn the demotion. Thus, the charge fails to demonstrate the Respondent acted in an arbitrary, discriminatory or bad faith manner.

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 have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before April 23, 2001, I shall dismiss your charge. If you have any questions, please call me at (510) 622-1023.

Sincerely,

TAMMY L. SAMSEL  
Regional Attorney