

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

MARY THORPE & LONG BEACH COUNCIL
OF CLASSIFIED EMPLOYEES, AFT
LOCAL 6108,

Charging Parties,

v.

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION & ITS CHAPTER 8,

Respondent.

Case No. LA-CO-1054-E

PERB Decision No. 1476

February 15, 2002

Appearances: Lawrence Rosenzweig, Attorney, for Mary Thorpe & Long Beach Council of Classified Employees, AFT Local 6108; California School Employees Association by Madalyn J. Frazzini, Attorney, for California School Employees Association & its Chapter No. 8.

Before Baker, Whitehead and Neima, Members.

DECISION

BAKER, Member: This case is before the Public Employment Relations Board (Board) on appeal by Mary Thorpe & Long Beach Council of Classified Employees, AFT Local 6108 (Thorpe and AFT) of a Board agent's dismissal (attached) of their unfair practice charge. The charge alleged that the California School Employees Association & its Chapter No. 8 (CSEA) violated section 3543.6 (a) and (b) of the Educational Employment Relations Act (EERA)¹ by refusing to pursue Thorpe's grievance to arbitration.

¹EERA is codified at Government Code section 3540 et seq. Section 3543.6 provides, in pertinent part:

The Board has reviewed the entire record in this case including the unfair practice charge, the dismissal letter, Thorpe and AFT's appeal and CSEA's response to the appeal. The Board agent dismissed the charge as untimely and the appeal offers nothing to refute this conclusion. The Board finds the Board agent's dismissal letter to be free from prejudicial error and adopts it as the decision of the Board.

ORDER

The unfair practice charge in Case No. LA-CO-1054-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Whitehead and Neima joined in this Decision.

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.

Dismissal Letter

April 17, 2002

Lawrence Rosenzweig, Attorney
2730 Wilshire Blvd., Suite 425
Santa Monica, CA 90403

Re: Mary Thorpe & Long Beach Council of Classified Employees, AFT Local 6108 v. California School Employees Association & its Chapter 8
Unfair Practice Charge No. LA-CO-1054-E
DISMISSAL LETTER

Dear Mr. Rosenzweig:

This charge was filed October 10, 2001 by Mary Thorpe and Long Beach Council of Classified Employee, AFT Local 6108 (Thorpe and AFT) against the California School Employees Association and its Long Beach Chapter No. 8 (CSEA) It is alleged that CSEA violated its duty of fair representation by failing to pursue, as unfinished business, Ms. Thorpe's out of class grievance to arbitration, after it was decertified as her exclusive representative in violation of Government Code section 3543.6(a) and (b).

On October 31, 2001, I discussed concerns I had about this charge with you. You waived a Warning Letter for Charging Parties and I indicated I would send you a Dismissal Letter instead.

My investigation has revealed the following facts. CSEA was the exclusive representative of classified employees of the Long Beach Community College District (District) until on or about March 10, 2000 when it was decertified. AFT became the new exclusive representative. The District and CSEA were parties to a collective bargaining agreement effective July 1, 1994 through June 30, 1997. The parties extended it to June 30, 1998.

Ms. Thorpe, a classified unit member represented then by CSEA filed a working out of class grievance on or about December 11, 1998 alleging a violation since April 2, 1998 of Articles XIII (Pay and Allowance) and XXIII (No Discrimination) of the Agreement. On September 14, 1999, CSEA advised the District that it was going to take the grievance to Level IV-Arbitration. After CSEA lost the decertification election on March 10, 2000, it advised Ms. Thorpe by letter dated March 17, 2000, that it could no longer represent her and proceed on the grievance to arbitration. Ms. Thorpe was advised to learn who her new representative was. After AFT decertified CSEA, the matter did not proceed to arbitration and the District has indicated that it will only arbitrate with the CSEA, not the new exclusive representative, the AFT. CSEA has been advised of the District's position.

On February 23, 2001, Ms. Thorpe filed a Petition to Compel Arbitration seeking a court order requiring the District to arbitrate with CSEA or another organization. CSEA filed a demurrer arguing that the petition is within PERB's jurisdiction. The demurrer was sustained on September 26, 2001. The Court placed the case in abeyance for ninety (90). It directed Ms. Thorpe to file an Unfair Practice Charge at PERB. Charging Parties have filed this charge and a second charge against the District, LA-CE-4334. The court case is scheduled for January 2, 2002 for determining the status of the PERB matter.

Based on the above facts, the charge does not state a prima facie violation within PERB's jurisdiction.

EERA section 3541.5(a)(1) prohibits PERB from issuing a complaint with respect to "any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (Gavilan Joint Community College District (1996) PERB Decision No. 1177.) A duty of fair representation claim accrues on the date the employee, exercising reasonable diligence, knew or should have known that further assistance from the union was unlikely. (International Union of Operating Engineers, Local 501 (Reich) (1986) PERB Decision No. 591-H.) The charging party bears the burden of demonstrating that the charge is timely filed. (Tehachapi Unified School District (1993) PERB Decision No. 1024; State of California (Department of Insurance) (1997) PERB Decision No. 1197-S.)

Since CSEA advised Ms. Thorpe on March 17, 2000 that it would no longer represent her on her grievance, she had until September 17, 2000 to file an unfair practice charge against CSEA. Therefore, this charge filed October 10, 2001 is untimely and is hereby dismissed as to Ms. Thorpe.

EERA section 3544.9 provides that "[t]he 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."

EERA section 3543.6 provides in part that, "It shall be unlawful for an employee organization to: (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."

AFT is also a Charging Party in this case. The duty of fair representation is a duty the exclusive representative owes to members of the bargaining unit. Any such violation is treated as a violation of EERA section 3543.6(b). In Oxnard School District (Gorcey and Tripp) (1988) PERB Decision No. 667, it was held that individual employees did not have standing to allege that the employer refused to negotiate in good faith, in violation of EERA section 3543.5(c). By analogy, it is clear that CSEA's duty was owed to Ms. Thorpe, the individual

employee. CSEA did not owe a duty of fair representation to AFT; and since AFT has not suffered any harm, it does not have standing to allege a violation of the duty of fair

representation in this matter. See also United Teachers of Los Angeles (Hopper) (2001) PERB Decision No. 1441 Accordingly, the charge is hereby dismissed as to the AFT.

Right to Appeal

Pursuant to PERB Regulations,¹ 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. (Regulation 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. (Regulations 32135(a) and 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 Regulation 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. (Regulations 32135(b), (c) and (d); see also Regulations 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. (Regulation 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

¹ PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

party or filed with the Board itself. (See Regulation 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

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November 1, 2001
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facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Regulation 32135(c).)

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. (Regulation 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 _____
Marc S. Hurwitz
Regional Attorney

cc: Madalyn J. Frazzini, Dep. Chief Counsel, CSEA

MSH