

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

NANCY LOUISE VINCELET,

Charging Party,

v.

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION AND ITS CHAPTER 77,

Respondent.

Case No. SA-CO-451-E

PERB Decision No. 1487

June 28, 2002

Appearances: Nancy Louise Vincelet, on her own behalf; California School Employees Association by Maureen C. Whelan, Attorney, for California School Employees Association and its Chapter 77.

Before Baker, Whitehead and Neima, Members.

DECISION

NEIMA, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Nancy Louise Vincelet (Vincelet) of a Board agent's dismissal (attached) of her unfair practice charge. The charge alleges that the California School Employees Association and its Chapter 77 (CSEA) violated the Educational Employment Relations Act (EERA)¹ by denying Vincelet "due process." Vincelet states that CSEA prevented her from receiving a fair hearing before an administrative law judge from the Office of Administrative Hearings and failed to inform her of the existence of PERB so that she could meet EERA's six-month statute of limitations as provided in EERA section 3541.5.² On the

¹ EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated all statutory references herein are to the Government Code.

² EERA section 3541.5 states, in pertinent part:

basis of the information submitted, the Board agent processed the charge as an alleged violation of CSEA's duty of fair representation, as set forth in EERA sections 3544.9³ and 3543.6(b).⁴

Having reviewed the entire record in this case, the Board affirms the Board agent's dismissal of Vincelet's charge and adopts the Board agent's dismissal letter as the decision of the Board itself.

The initial determination as to whether the charges of unfair practices are justified, and, if so, what remedy is necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board. Procedures for investigating, hearing, and deciding these cases shall be devised and promulgated by the board and shall include all of the following:

(a) Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not do either of the following:

(1) 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.

³ 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.

⁴ Section 3543.6(b) provides:

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.

VINCELET'S APPEAL

Vincelet newly alleges on appeal that a union witness at the December 8, 2000 hearing altered her tape recorded testimony. PERB Regulation 32635⁵ states, in pertinent part:

(b) Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence.

In South San Francisco Unified School District (1990) PERB Decision No. 830, the Board addressed this regulation and found:

The purpose of PERB Regulation 32635(b) is to require the charging party to present its allegations and supporting evidence to the Board agent in the first instance, so that the Board agent can fully investigate the charge prior to deciding whether to issue a complaint or dismiss the case.

Vincelet has not shown good cause, nor provided any rationale, for presenting new allegations in her appeal. Thus, the new information shall not be considered in this appeal.

ORDER

The unfair practice charge in Case No. SA-CO-451-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Baker and Whitehead joined in this Decision.

⁵ PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

Dismissal Letter

August 13, 2002

Nancy Louise Vincelet
333 S. Fairmont Avenue # C
Lodi, CA 95240

Re: Nancy Louise Vincelet v. California School Employees Association & its Chapter 77
Unfair Practice Charge No. SA-CO-451-E
DISMISSAL LETTER

Dear Ms. Vincelet:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on June 8, 2001. You allege that the California School Employees Association & its Chapter 77 (CSEA) violated the Educational Employment Relations Act (EERA)¹ by failing to properly represent you.

I indicated to you in my attached letter dated July 3, 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 July 10, 2001, the charge would be dismissed.

I received your amended charge on July 10, 2001. The additional information you provided does not appear to assist you with the two allegations discussed in my letter of July 3. For the reasons discussed in that letter the allegation regarding CSEA providing you with incorrect information on November 30, 2001, and the allegation that CSEA did not properly represent you with regard to your disciplinary hearing of December 8, 2001, must be dismissed.

In your amended charge, you also contend that CSEA failed to inform you about PERB and statutory time limits that relate to filing a charge with this agency. You contend that CSEA should have informed you of your right to file an unfair practice charge in response to a letter you sent to them, in March 21, 2001, requesting assistance in securing a new hearing over the termination of your employment.

By not providing the information regarding PERB you allege the exclusive representative, CSEA, denied you the right to fair representation guaranteed by EERA section 3544.9 and thereby violated section 3543.6(b).

¹ EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

As explained in my letter of July 3, 2001, the duty of fair representation imposed on the exclusive representative extends to contract negotiations and grievance handling. (Fremont Teachers Association (King) (1980) PERB Decision No. 125; United Teachers of Los Angeles (Collins) (1982) PERB Decision No. 258.) However, the duty of fair representation is limited to contractually based remedies under the exclusive control of the union. San Francisco Classroom Teachers Association (Chestangue) (1985) PERB Decision No. 544. Accordingly, because a union has no obligation to inform employees regarding PERB or its processes, this allegation must also be dismissed.

Right to Appeal

Pursuant to PERB Regulations,² 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

² PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

SA-CO-451-E
August 9, 2001
Page 3

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 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 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 _____
Bernard McMonigle
Regional Attorney

Attachment

cc: Maureen C. Whelan

BMC

Warning Letter

August 13, 2002

Nancy Louise Vincelet
333 S. Fairmont Avenue # C
Lodi, CA 95240

Re: Nancy Louise Vincelet v. California School Employees Association & its Chapter 77
Unfair Practice Charge No. SA-CO-451-E
WARNING LETTER

Dear Ms. Vincelet:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on June 8, 2001. You allege that the California School Employees Association & its Chapter 77 (CSEA) violated the Educational Employment Relations Act (EERA)¹ by failing to properly represent you. We discussed this charge by telephone on this date.

Your charge alleges the following. You were employed as a payroll assistant in the Lodi Unified School District. For disciplinary reasons, you were placed on administrative leave on June 15, 2000 and on unpaid leave July 1, 2000. CSEA representative Burt Gray assisted you in the early part of the disciplinary procedures². He advised not to discuss your earlier complaint against your supervisor for assault. After a Skelly hearing, you decided to secure an attorney to assist you. On August 8, 2000, Mr. Gray wrote you that he had received a telephone call from your attorney who said he had advised you not to talk to anyone else regarding your employment situation. Mr. Gray also stated that CSEA would no longer be involved in representing you and would bear no financial responsibility for your representation.

You fired your attorney and represented yourself in a hearing before an administrative law judge from the Office of Administrative Hearings. The hearing took place on December 8, 2000. On December 26, 2000 you received a letter from the District stating that the ALJ had recommended that your employment be terminated.

You allege that, prior to the hearing on December 8th, you were given faulty information by CSEA regarding the proper way to request that the District produce necessary witnesses. This occurred on or about November 30, 2001.

¹ EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

² These disciplinary procedures are not part of the collective bargaining agreement between CSEA and the District.

On March 12, 2001, you were sent another letter by Burt Gray. He informed you that CSEA would not be providing you with legal assistance in your lawsuit against the District. On March 21, you sent a letter to the president of CSEA in which you stated your belief that the disciplinary hearing in December was not fairly conducted. You requested assistance in arranging for a new hearing. As of the date of the charge, you have received no reply to this letter³.

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.) 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.)

Your charge was filed on June 8, 2001. An alleged violation that occurred prior to December 8, 2001, is outside the statutory limitations period. Accordingly, the allegation that CSEA provided you with incorrect information on or about November 30, 2001 must be dismissed.

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.) However, the duty of fair representation is limited to contractually based remedies under the union's exclusive control. San Francisco Classroom Teachers Association (Chestangue) (1985) PERB Decision No. 544. Accordingly, a union has no obligation to represent employees in disciplinary procedures outside the collective bargaining agreement or in lawsuits against the employer. Because CSEA has no duty of fair representation obligation regarding either the disciplinary hearing before OAH or your lawsuit, your allegations regarding these matters must also be dismissed.

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.

³ Burt Gray had informed you the prior August that CSEA would not provide you with any further representation in this disciplinary matter.

SA-CO-451-E

July 3, 2001

Page 3

If I do not receive an amended charge or withdrawal from you before July 10, 2001, I shall dismiss your charge. If you have any questions please call me at the above telephone number.

Sincerely,

Bernard McMonigle
Regional Attorney

BMC