

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

LORRAINE HOLFORD,

Charging Party,

v.

UNITED TEACHERS OF RICHMOND,

Respondent.

Case No. SF-CO-614-E

PERB Decision No. 1604

February 25, 2004

Appearance: Amamgbo & Associates by C. Donald Amamgbo, Attorney, for Lorraine Holford.

Before Baker, Whitehead and Neima, Members.

DECISION

NEIMA, Member: This case is before the Public Employment Relations Board (Board) on appeal by Lorraine Holford (Holford) from a Board agent's dismissal (attached) of her unfair practice charge. The charge alleged that the United Teachers of Riverside violated its duty of fair representation under the Educational Employment Relations Act (EERA)¹ by failing to arbitrate a grievance on behalf of Holford. The Board agent dismissed the charge for failure to state a prima facie case of a violation of the duty of fair representation.

The Board has reviewed the entire record in this matter, including the original and amended charge, the warning and dismissal letters and Holford's appeal. The Board finds the dismissal letter to be free of prejudicial error and adopts it as the decision of the Board itself.

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

ORDER

The unfair practice charge in Case No. SF-CO-614-E is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Members Baker and Whitehead joined in this Decision.

Dismissal Letter

September 20, 2002

Lorraine Holford
257 Stonewood Court
Vallejo, CA 94591

Re: Lorraine Holford v. United Teachers of Richmond
Unfair Practice Charge No. SF-CO-614-E, First Amended Charge
DISMISSAL LETTER

Dear Ms. Holford:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on August 1, 2002. Lorraine Holford alleges that the United Teachers of Richmond violated the Educational Employment Relations Act (EERA)¹ by breaching its duty of fair representation.

I indicated to you in my attached letter dated August 16, 2002, 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 August 23, 2002, the charge would be dismissed.

On August 20, 2002, I received a facsimile from you indicating that you wanted the West Contra Costa Unified School District to be a party to the charge. I called you that day and explained that you could file a separate charge against the District. On August 23, 2002, I granted your request for an extension to file a first amended charge to August 26, 2002. On August 26, 2002 you filed a first amended charge which alleges the following information.

You were a Project Assistant at Kennedy High School until the position was eliminated and you took a teaching position at another school. The Project Assistant position was later restored at Kennedy High School but another employee was hired.

On January 7, 2002, you filed a grievance, but did not hear from UTR. In February 2002 you contacted UTR's Ron Gleason who indicated the grievance was not received. Several days later Gleason told you that you would have to refile the grievance and Executive Director Jeff Cloutier was assigned to your case. Cloutier met with you and indicated that Article 14 of the collective bargaining agreement did not apply to the Project Assistant position. However, the

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.

collective bargaining agreement does not specifically exclude your position from coverage under Article 14.

Article 14, Section 3.3 of the parties' collective bargaining agreement provides:

In the event a teacher is involuntary transferred from a school and the eliminated position is restored at the beginning of the subsequent school year, the transferred teacher shall have the right to return to his/her previous school.

The Assistant Superintendent, Linda Lester denied Holford's grievance at Level II. Lester explained, in pertinent part:

Project Assistant positions are promotional positions within UTR. The language in Article 14, Section 3 does not apply to these positions. Although the Project Assistant position at Kennedy High School was eliminated due to lack of funding, Ms. Holford did not have to transfer from the school; she was still entitled to a teaching position there. Therefore, this section of Article 14 does not apply to her situation.

As to Article 14, Section 6.4, I don't know what position Ms. Holford requested and was rejected. Project Assistants are chosen by the school from an eligibility list which is developed according to Article 45 of the contractual agreement and kept by Personnel Services. This list is also furnished to principals who are seeking to fill openings for Project Assistant. It is not a position for which a person may transfer. The school selects the person from the list who best serves their needs. Therefore, the reassignment language does not apply to this situation. Project Assistants retain all of their transfer rights as teachers, including all of the language of Article 14, but Article 14 does not apply to Project Assistants as these positions are promotional positions.

Collins confirmed that he spoke with you and that the grievance was not presented to the Grievance Committee. However, Collins indicated that your grievance was handled by the Executive Director and heard by the Executive Board, which decided not to pursue your grievance to arbitration.

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 Respondent's conduct was arbitrary, discriminatory or in bad faith. 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.

UTR consistently told you that your grievance's chance of success was minimal. Although you believe your position should not be excluded from Article 14 of the CBA, both the District and UTR believe that it is properly excluded as a promotional position. Cloutier provided you with a written explanation of UTR's reasoning on this matter. As both the District and UTR agree that promotional positions are excluded from Article 14, UTR's determination not to pursue your grievance to arbitration was not arbitrary. Nor does the charge demonstrate that UTR's delay in filing the grievance affected the outcome.

The charge's allegations that Cloutier withheld evidence of discriminatory motives are not supported by facts. Rather it appears that Cloutier pursued the grievance on your behalf despite his judgement that it lacked merit. Your allegation that the Grievance Committee did not hear a presentation of your grievance on July 10, 2002 does not establish that UTR acted in an arbitrary, discriminatory or bad faith manner as your grievance was presented to the Executive Board, not the Grievance Committee for evaluation. The parties' agreement that the contract language excludes promotional positions is a rational basis for denying your request for arbitration. Thus, the charge must 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

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

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 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.)

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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
General Counsel

By _____
Tammy Samsel
Regional Attorney

Attachment

cc: Jeff Cloutier

Warning Letter

August 16, 2002

Lorraine Holford
257 Stonewood Court
Vallejo, CA 94591

Re: Lorraine Holford v. United Teachers of Richmond
Unfair Practice Charge No. SF-CO-614-E
WARNING LETTER

Dear Ms. Holford:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on August 1, 2002. Lorraine Holford alleges that the United Teachers of Richmond violated the Educational Employment Relations Act (EERA)¹ by breaching its duty of fair representation. My investigation revealed the following information.

The West Contra Costa Unified School District employed Lorraine Holford as a Project Assistant at the Kennedy High School. As such, Holford was exclusively represented by the United Teachers of Richmond. On July 1, 2001, the District eliminated Holford's position and during the next school year Holford began working as a teacher at a different school site. On December 1, 2001, the Project Assistant position was reinstated at Kennedy High and another teacher was offered the position.

On January 7, 2002, Holford filed a grievance against the District alleging the District violated the involuntary transfer provision of the parties' collective bargaining agreement. Article 14, section 3.3 of the parties' CBA provides:

In the event a teacher is involuntarily transferred from a school and the eliminated position is restored at the beginning of the subsequent school year, the transferred teacher shall have the right to return to his/her previous school.

Holford believed she should have had the right to return to Kennedy High as the Project Assistant. On February 26, 2002, UTR's Executive Director Jeff Cloutier, told Holford he doubted the viability of her grievance. Holford received contrary advice from Attorney Weintraube. Cloutier disputed Weintraube's interpretation of the parties' contract and on May 20, 2002, wrote the following explanation to Holford:

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.

In several phone conversations you sought and were given my advice that a grievance under the involuntary transfer section of the agreement stood virtually no chance of success, as this section was not germane to your situation. The specific language has been bargained to exclude those positions for which there is a “eligibility” list and the practices of the parties excluded Project Assistant positions from a guarantee of return to that position or a similar position.

On May 22, 2002, Cloutier sent Holford the following analysis of her grievance:

As you are aware, you were reassigned from a Project Assistant position to a classroom teacher. Your reassignment came about as a result of an administrative decision due to the lack of funding for your Project Assistant job at Kennedy High.

It appears the District was within their rights to abolish the Project Assistant position based on the lack of funding. Further, I believe the District acted within its authority to notify you that you were on an “eligibility” list and, if interested, you were to apply for any Project Assistant vacancies. My research and reading of our agreement does not place you in any “involuntary transfer” situation as described in our agreement. The specific language on Page 30, Article 14, section 3, does not apply to your situation.

On July 10, 2002, the UTR Executive Board rejected Holford’s request to take her grievance to arbitration. Holford alleges that UTR denied her its duty of fair representation by refusing to take her grievance to arbitration.

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 Respondent'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 omitted.]

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.]

Although Holford disagrees with UTR's decision not to pursue a grievance to arbitration, the charge does not demonstrate UTR acted in an arbitrary, discriminatory or bad faith manner. UTR consistently explained that it did not believe Holford's grievance was meritorious. The charge does not demonstrate UTR's position was without a rational basis. UTR contends the parties' CBA provision on involuntary transfers does not apply to Holford's situation as the project assistant positions have eligibility lists and the parties' practice excluded such positions from the involuntary transfer provision. Thus, the charge fails to state a prima facie violation.

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 that 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 August 23, 2002, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Tammy Samsel
Regional Attorney