

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

DELORES BANKS & PIYANOOT
MOLIDPIREE,

Charging Party,

v.

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 790, AFL-CIO,

Respondent.

Case No. SF-CO-30-M

PERB Decision No. 1636-M

June 4, 2004

Appearances: Delores Banks and Piyanoot Molidpiree, on their own behalf; Weinberg, Roger & Rosenfeld by Vincent A. Harrington, Jr., Attorney, for Service Employees International Union, Local 790, AFL-CIO.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

NEIMA, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Delores Banks and Piyanoot Molidpiree (Charging Parties) from a Board agent's dismissal of their unfair practice charge. The charge alleged that the Service Employees International Union, Local 790, AFL-CIO (SEIU) violated its duty of fair representation under the Meyers-Milias-Brown Act (MMBA)¹ by failing to adequately prosecute an unfair practice charge before PERB.

After reviewing the entire record in this matter, including the original and amended unfair practice charge, the warning and dismissal letters, Charging Parties' appeal and SEIU's response, the Board issues the decision below.

¹The MMBA is codified at Government Code section 3500, et seq.

BACKGROUND

Charging Parties are senior clerk typists with the City & County of San Francisco (City). They allege that the City committed an unlawful unilateral change when it began requiring senior clerk typists to enter “contact” information into a new computer-based case management system for child welfare services.

On December 12, 2001, SEIU filed an unfair practice charge with PERB (Case No. SF-CE-18-M) over this requirement. The charge alleged the City’s decision to have senior clerk typists input the “contact” information violated the MMBA. Included in the charge were copies of the senior clerk typist job descriptions and a description of the new case management system.

On August 2, 2002, the Board agent dismissed the charge on the grounds that the assignment of duties reasonably related to existing duties is a management prerogative and are not subject to bargaining. Recently, the Board issued its decision affirming the dismissal. (See City & County of San Francisco (2004) PERB Decision No. 1608-M (City & County of San Francisco).)

In this charge, filed before issuance of the Board’s decision in City & County of San Francisco, Charging Parties contend that SEIU’s failure to adequately prosecute its charge resulted in the dismissal. Specifically, Charging Parties contend that SEIU failed to present PERB with current job descriptions for senior clerk typists and failed to pursue a class action grievance on the parties behalf.

DISCUSSION

While the MMBA does not expressly impose a statutory duty of fair representation upon employee organizations, the courts have held that “unions owe a duty of fair representation to their members, and this requires them to refrain from representing their

members arbitrarily, discriminatorily, or in bad faith.” (Hussey v. Operating Engineers Local Union No. 3 (1995) 35 Cal.App.4th 1213 [42 Cal.Rptr.2d 389] (Hussey).) In Hussey, the court further held that the duty of fair representation is not breached by mere negligence and that a union is to be “accorded wide latitude in the representation of its members . . . absent a showing of arbitrary exercise of the union’s power.”

In International Association of Machinists (Attard) (2002) PERB Decision No. 1474-M (IAM (Attard)), the Board determined that it is appropriate in duty of fair representation cases to apply precedent developed under the other acts administered by the Board. The Board noted that its decisions in such cases, including Reed District Teachers Association, CTA/NEA (Reyes) (1983) PERB Decision No. 332 and American Federation of State, County and Municipal Employees, Local 2620 (Moore) (1988) PERB Decision No. 683-S, are consistent with the approach of both Hussey and federal precedent (Vaca v. Sipes (1967) 386 U.S. 171 [64 LRRM 2369].)

Thus, in order to state a prima facie violation of the duty of fair representation under the MMBA, a charging party must at a minimum include an assertion of facts from which it becomes apparent in what manner the exclusive representative's action or inaction was without a rational basis or devoid of honest judgment. (IAM (Attard).) The burden is on the charging party to show how an exclusive representative abused its discretion, and not on the exclusive representative to show how it properly exercised its discretion. (United Teachers – Los Angeles (Wyler) (1993) PERB Decision No. 970.)

The Board has long held that the duty of fair representation is limited to contractually-based remedies under the union's exclusive control. (Capistrano Unified Education Association, CTA/NEA (La Marca) (2001) PERB Decision No. 1422; California School Employees Association & its Chapter 130 (Simpson) (2003) PERB Decision No. 1550.) Thus,

a union is not obligated to assist an employee with matters before the State Commission on Teacher Credentialing or with a law suit against a former school district employer (Ibid.), nor with proceedings before a Commission on Professional Competence. (Oakland Education Association (McKeel) (2000) PERB Decision No. 1383; see, also, Oxnard Federation of Teachers (Torres) (2002) PERB Decision No. 1494; California School Employees Association (Garcia) (2001) PERB Decision No. 1444; California State Employees Association (Bradford) (2001) PERB Decision No. 1421-S; San Bernardino Teachers Association, CTA/NEA (Cooksey) (2000) PERB Decision No. 1387; California School Employees Association, Chapter 724 (Professional School Bus Drivers Association) (1992) PERB Decision No. 923.)

Here, Charging Parties' allegations involve SEIU's prosecution of an unfair practice charge before PERB. Specifically, Charging Parties assert that SEIU failed to submit certain evidence which would have aided its case. The Board finds that even if a duty of fair representation existed, such allegations fail to demonstrate that SEIU acted without a rational basis or that its actions were devoid of honest judgment. Accordingly, Charging Parties have failed to state a prima facie case and the charge must be dismissed.

ORDER

The unfair practice charge in Case No. SF-CO-30-M is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member Whitehead joined in this Decision.