

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LAUREL FREEMAN,

Charging Party,

v.

MADERA UNIFIED TEACHERS
ASSOCIATION,

Respondent.

Case No. SA-CO-488-E

PERB Decision No. 1719

November 30, 2004

Appearances: Bennett & Sharpe, Inc. by Barry J. Bennett, Attorney, for Laurel Freeman; California Teachers Association by Ballinger G. Kemp, Attorney, for Madera Unified Teachers Association.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on appeal filed by Laurel Freeman (Freeman) of a Board agent's dismissal (attached) of her unfair practice charge. The charge alleged that the Madera Unified Teachers Association (MUTA) acted arbitrarily in its handling of Freeman's grievance against the Madera Unified School District (District) in violation of the Educational Employment Relations Act (EERA)¹ by failing to represent Freeman appropriately in a dispute over the transfer of two other teachers and Freeman.

The Board has reviewed the entire record in this matter, including the original and amended unfair practice charge, the warning and dismissal letters, Freeman's appeal and the Association's response. The Board finds the warning and dismissal letters to be free from

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

prejudicial error and adopts them as the decision of the Board itself, subject to the discussion below.

DISCUSSION

Freeman states on appeal that the Board agent misread the facts of her case. She acknowledges, however, that her charge alleging MUTA violated its duty of fair representation by not taking her grievance to arbitration was incorrectly dismissed.

We do not agree that the facts were misread. Freeman asserts that the Board agent's actions condone a "group mentality" representation. The Board agent has cited Castro Valley Unified School District (1980) PERB Decision No. 149 (Castro Valley) noting it holds "a union may reject even a grievance of arguable merit if a victory would damage conditions for the bargaining unit as a whole."

In Castro Valley, PERB held that an employee does not have an absolute right to have a grievance taken to arbitration and that an exclusive representative's reasonable refusal to proceed with arbitration is essential to the operation of a grievance and arbitration system.

It is concluded that it is reasonable and prudent for an employee organization representing teachers in a large District such as this one to have standard conditions for its participation in the grievance process which it applies to all unit members. Such conditions facilitate the orderly and efficient processing of the large number of grievances UTLA handles each year.

Such is the situation in this case. MUTA did represent Freeman and the other teachers involved in this situation. It made a reasonable decision regarding the impact of its actions on all the teachers and worked through the situation to do what it believed was best in representing all three teachers.

Freeman and the two other teachers were enveloped in this personality conflict that had gone on for years and the District believed had reached a level of impacting the instructional

program. To resolve this problem the District determined all three teachers would be moved to separate schools.

While the MUTA president did meet with the District for discussions about this situation, Freeman has not alleged facts that show collusion of MUTA and the District. The teachers were all in the same bargaining unit and MUTA did not take sides among them and worked to assure they were all three treated equally. Freeman believes she should have been treated differently. Whether that is true or not is irrelevant as the actions taken by MUTA do not rise to a prima facie case of violating the duty of fair representation.

ORDER

The unfair practice charge in Case No. SA-CO-488-E is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Members Whitehead and Neima joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8386
Fax: (916) 327-6377



July 27, 2004

Barry J. Bennett, Esquire
Bennett & Sharpe
925 "N" Street, Suite 150
Fresno, CA 93721-2221

Re: Laurel Freeman v. Madera Unified School District
Unfair Practice Charge No. SA-CO-488-E
DISMISSAL LETTER

Dear Ms. Freeman:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on April 16, 2004. Your client, Laurel Freeman, alleges that the Madera Unified Teachers Association (MUTA) violated the Educational Employment Relations Act (EERA)¹ by failing to properly represent her.

I indicated to you in my attached letter dated May 19, 2004, 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 May 26, 2004, the charge would be dismissed. You were granted an extension of time and I received your amended charge on June 29, 2004.

In that amended charge you continue to assert that the Association violated its duty of fair representation by "collaborating" in the decision to transfer Laurel Freeman as well as two other teachers from Howard school. You assert that it was the Association that "first came up with the idea of transferring" her.

In the amended charge, you also allege that the Association "first came up with the idea of transferring [Freeman], Wachtel, and Santoro, apparently so that they would not have to represent [Freeman]." Freeman had sought that the Association pursue a grievance to arbitration that included allegations of "verbal attack" by the other two teachers.

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 stated in my prior letter,

On March 24, the MUTA Executive Board met and considered Freeman's request for arbitration. The board rejected Freeman's request. According to the MUTA response to this charge, the board did not believe there was credible evidence of a "verbal attack" and did not want to take sides between bargaining unit members or seek the discipline of bargaining unit members. The board also did not believe that there was a credible denial of representation allegation or foundation for a reprisal claim.

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 determining whether a union has violated its duty to represent PERB does not judge whether a union's decision was, "correct" but whether its actions "had a rational basis, or was reached for reasons that were arbitrary or based on invidious discrimination." International Union of Operating Engineers, Local 501 (Reich) (1986) PERB Decision No. 591-H. Accordingly, a union may reject even a grievance of arguable merit if a victory would damage conditions for the bargaining unit as a whole. Castro Valley Unified School District (1980) PERB Decision No. 149

As discussed in my prior letter, you have not set forth facts that demonstrate that the union's actions, with regard to the transfer of the three teachers or the grievance filed by Ms. Freeman were made for reasons that were irrational, arbitrary or that demonstrate bad faith. Accordingly, I am dismissing the charge based on the facts and reasons contained herein and in my May 19 letter.

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. (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 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).)

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

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
General Counsel

By

Bernard McMonigle
Regional Attorney

Attachment

cc: Ballinger Kemp

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8386
Fax: (916) 327-6377



May 19, 2004

Barry J. Bennett, Esquire
Bennett & Sharpe
925 "N" Street, Suite 150
Fresno, CA 93721-2221

Re: Laurel Freeman v. Madera Unified Teachers Association
Unfair Practice Charge No. SA-CO-488-E
WARNING LETTER

Dear Mr. Bennett:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on April 16, 2004. Your client, Laurel Freeman, alleges that the Madera Unified Teachers Association (MUTA) violated the Educational Employment Relations Act (EERA)¹ by failing to properly represent her.

The charge states that Ms. Freeman has taught in the district since 1972. Prior to teaching at Howard School she taught at Madison and Alpha schools where she served 12 years as a MUTA representative. She transferred to Howard School in 1996. At that time, she was told by the principal that other teachers might isolate her because of her district seniority.

Freeman states that she initially became a part of the leadership group at Howard in 1997. At a meeting of that group, the principal asked what could be done to get the school moving forward more assertively. Freeman addressed the "duty day" and expressed her surprise that teachers did not have to sign in, and could come and go as they pleased. Other teachers were upset by the remark and, over the next several years, she found herself excluded from some teacher activities.

In May 2003, an incident occurred in which the animosity against her was directed at her students. According to the charge, teachers Debee Wachtel and Theresa Santoro were rude to Freeman's students. This incident led to a meeting between those two teachers and Principal Beveridge. Other staff members and parents were in attendance. Freeman was asked to attend but declined, stating "No, not with those two in there." A short time later Beveridge went to Freeman's room, apologized to her and told her to avoid Wachtel and Santoro. Beveridge expressed appreciation for Freeman's efforts at Howard School.

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.

On September 2, 2003, Freeman was told by MUTA steward Tom Greci that District Director of Certificated Human Resources Carles Beckett and he had discussed the issues involving Freeman, Wachtel and Santoro. Beckett told Greci that the District would move all three teachers from Howard School.

On September 9, Principal Beveridge issued a memorandum to all teachers. He stated that the interpersonal conflicts among some teachers must stop and that he no longer wished to mediate or attempt to resolve the disputes which had "plagued" the school. He also stated that teachers must work together professionally or their voluntary transfer would be arranged. In its response to this unfair practice charge, WUTA states that Freeman, Wachtel and Santoro were understood by other staff to be the reason for the memo.

Freeman states that, sometime in September, Beveridge told her that Beckett asked if he had anything "on her" in his files. Beveridge said that he did not.

At two meetings in October 2003, a yearbook committee meeting and a staff development meeting, there were disputes or verbal confrontations involving Freeman, Wachtel and Santoro. Because of the confrontation at the October staff development meeting, Freeman did not attend the November 4 staff development meeting. Freeman told this to Beveridge when he went to her room and told her that the meeting was going to start. Beveridge did not order her to attend.

On November 7, 2004, Beveridge asked Freeman to come to his office. Freeman asked whether she needed union representation. Beveridge stated that would not be necessary. At his office, Beveridge gave Freeman a Conference Summary Memo which states that they discussed her failure to attend the November 4 staff development meeting. The memo directed that Freeman attend future meetings.

On November 25, 2003, Freeman filed a grievance alleging that Beveridge had violated the collective bargaining agreement by failing to prevent a "verbal attack" against her on October 28 and by violating her right to union representation when he met with her on November 7. The grievance was denied by the employer and pursued by Freeman through the third step (the employer's governing board).

On March 1, 2004, Freeman informed the union that she wished to pursue the grievance to arbitration. Union President Greci informed her that the union would consider the request and determine whether the matter would proceed to arbitration.

On March 18, Greci told Freeman that he had been called to a meeting with the District; Freeman would be transferred from Howard School as would Santoro and Wachtel.²

² Your charge states "the decision had been made between CTA and the District to transfer me." However, without additional facts, it is not clear whether you allege the union participated in the personnel decision or was merely informed of the personnel decision as stated in the union's response to this charge, served on you May 7, 2004.

On March 24, the MUTA Executive Board met and considered Freeman's request for arbitration. The board rejected Freeman's request. According to the MUTA response to this charge, the board did not believe there was credible evidence of a "verbal attack" and did not want to take sides between bargaining unit members or seek the discipline of bargaining unit members. The board also did not believe that there was a credible denial of representation allegation or foundation for a reprisal claim.

Your charge alleges that MUTA violated its duty of fair representation by failing to proceed to arbitration and "participating in the decision to move me without any notice to me and/ or my consent."

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.]

An arbitration of arguable merit may be rejected by the union if the union believes it could damage conditions for the bargaining unit as a whole. Castro Valley Unified School District (1980) PERB Decision No. 149

Here, you have set forth insufficient facts to demonstrate that the union acted in bad faith when it determined not to pursue the grievance to arbitration. Nor have you set forth facts that establish that the union exercised bad faith, or acted without a rational basis, by “participating in the decision”³ or acquiescing in the employer’s decision to transfer Freeman.

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 May 26, 2004, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Bernard McMonigle
Regional Attorney

BMC

³ As stated, you have provided no facts demonstrating how the union “participated” in the decision to transfer Freeman.