STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SHERRY E. RADFORD, Charging Party, v. CALIFORNIA TEACHERS ASSOCIATION, Respondent.	Case No. LA-CO-1187-E PERB Decision No. 1763 April 21, 2005

Appearances: Sherry E. Radford, on her own behalf; John F. Kohn, Attorney, for California Teachers Association.

Before Duncan, Chairman; Shek and McKeag, Members.

DECISION

MCKEAG, Member: This case is before the Public Employment Relations Board (Board) on appeal by Sherry E. Radford (Radford) of a Board agent's dismissal (attached) of her unfair practice charge. The unfair practice charge alleges that the California Teachers Association (CTA)[1] violated the Educational Employment Relations Act (EERA)[2] by its failure to meet its duty of fair representation.

The Board has reviewed the entire record, including the unfair practice charge, the warning and dismissal letters, Radford's appeal and CTA's response. The Board finds the Board agent's dismissal to be free of prejudicial error and adopts it as a decision of the Board itself.

---

[1]It should be noted that CTA is not the exclusive representative and does not owe a duty of fair representation to bargaining unit employees. (California Teachers Association, CTA/NEA (Torres) (2000) PERB Decision No. 1386.) It is presumed that Radford intended to file her charge against the Sweetwater Education Association/CTA/NEA. For the reasons discussed in the attached letters, the charge does not demonstrate that the Sweetwater Education Association breached its duty of fair representation.

[2]EERA is codified at Government Code section 3540, et seq.

ORDER

The unfair practice charge in Case No. LA-CO-1187-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member Shek joined in this Decision.

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916)327-8384
Fax: (916) 327-6377

February 7, 2005

Sherry E. Radford

Re: Sherry E. Radford v. California Teachers Association
Unfair Practice Charge No. LA-CO-1187-E
DISMISSAL LETTER

Dear Ms. Radford:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 20, 2004. Sherry E. Radford alleges that the California Teachers Association violated the Educational Employment Relations Act (EERA)[1] by failing to provide her with its duty of fair representation.

I indicated to you in my attached letter dated January 21, 2005, 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 January 31, 2005, the charge would be dismissed.

On January 21, 2005, I received a facsimile from you regarding the Respondent's position statement. The facsimile did not include a proof of service indicating it had been served on the Respondent. The facsimile was received after the warning letter had issued. I had not received either an amended charge or a request for withdrawal in response to the warning letter and called you on February 2, 2005 to discuss this matter. You indicated you wanted to discuss the matter with other individuals and later returned my call indicating you did not want to withdraw your charge. We also discussed the January 21, 2005, facsimile which had not been served on CTA. You indicated you would serve CTA, and provide me with a proof of service indicating as such.[2]

The January 21, 2005 facsimile points out that CTA's position statement included the following errors: (a) the District and CTA did not inform Radford that the purpose of 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.

[2] To date I have not received the proof of service, but I have attached the facsimile to this letter.

December 2003 meeting was to administratively transfer her, but only indicated there were "concerns"; (b) the March 2004 letter from Radford to Salazar was not sexual in nature; (c) on June 11, 2004, the male Human Resources Director visited Radford's home on a Saturday morning and proceeded to discuss placing Radford on administrative leave while Radford was in her bathrobe; (d) Steiner refused to read the emails Radford sent to Salazar during Radford's June 15, 2004 meeting with Steiner; (e) the CTA Executive Director did not show up during the June 21, 2004 meeting with the District's investigator; (f) the District cannot produce numerous inappropriate e-mails and the investigation did not uncover any sexual conduct; (g) CTA's should not rely on the failure of a previous transfer grievance when deciding whether to pursue Radford's transfer grievance; (h) Shoemake told Radford that there had to be something in it for CTA to pursue a grievance on her behalf; (i) CTA had not vigorously opposed her disciplinary action; (j) CTA never told Radford that the notes she requested were available; (k) Shoemake did not represent Radford at the October 27th meeting; (l) despite the District's conclusions to the contrary, Radford denies she sexually harassed anyone; (m) it is absurd that CTA does not have an obligation to enforce the Education Code; and (n) CTA did not respond to Radford's request for information.

As stated in the warning letter, the duty of representation is limited and does not extend to extra-contractual forums. (Service Employees International Union (1997) PERB Decision No. 1219.) Thus, CTA's failure to enforce the Education Code does not demonstrate a duty of fair representation violation. The warning letter also explained that the charge must demonstrate CTA acted in an arbitrary, discriminatory or bad faith manner. (See United Teachers of Los Angeles (Collins) (1982) PERB Decision No. 258.) Taking Radford's facts as true, as required at this level of the investigation[3], neither the charge nor the facsimile demonstrate CTA acted in an arbitrary, discriminatory or bad faith manner. Thus, the charge is dismissed for the reasons stated here and in the warning letter.

Right to Appeal

Pursuant to PERB Regulations,[4] 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,

[3] Mark West Union School District (1993) PERB Decision No. 1011.

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

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.)

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

Attachments

cc: John Kohn

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916)327-8384
Fax: (916) 327-6377

January 21, 2005

Sherry E. Radford

Re: Sherry E. Radford v. California Teachers Association
Unfair Practice Charge No. LA-CO-1187-E
WARNING LETTER

Dear Ms. Radford:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 20, 2004. Sherry E. Radford alleges that the California Teachers Association violated the Educational Employment Relations Act (EERA)[1] by failing to provide her with its duty of fair representation. My investigation revealed the following information.

Radford is a teacher represented by CTA. In December 2003, the Principal of East Lake High School, Ysidro Salazar, sought Radford's transfer to another school. Salazar alleged Radford wrote him e-mails which were sexual in nature. On December 19, 2003, CTA President Alex Anguiano met with District officials and prevented the transfer by agreeing that communications from Radford would cease.

In the Spring of 2004, the District alleged that Radford gave an inappropriate letter to Salazar. The District placed Radford on administrate leave and initiated its sexual harassment complaint procedure. Radford contacted CTA requesting a referral to an attorney. CTA complied with Radford's request and she met with Fern Steiner on June 15, 2004. Steiner told Radford to refrain from contacting Salazar and refused to research Radford's case. Radford filed a complaint regarding Steiner's snide tone, but did not receive a response from CTA.

Radford contacted Executive Director Lian Shoemake, complained about Steiner and indicated she was going to retain her own counsel. Shoemake indicated CTA would continue to represent her upon her request. On June 21, 2004, Anguiano accompanied Radford during an interview with an external investigator regarding Salazar's allegations.

In June 2004, grades were submitted in Radford's name in violation of the Education Code.

[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 July 2004, the District involuntarily transferred Radford. Radford indicates she was highly qualified for her original assignment and that she is not as qualified for her new assignment. Radford believes she is thereby vulnerable to future negative action by the District. CTA did not object to Radford's transfer.

In July 2004, CTA refused to file a grievance on Radford's behalf. Shoemake told Radford that the grievance would be denied, that arbitration would cost $3000, and that there had to be something in it for CTA to justify such an expenditure. On August 2, 2004, Shoemake explained to Radford that the collective bargaining agreement only required that involuntary transfers not be arbitrary or capricious. Shoemake explained that CTA could not make a credible argument that her transfer was arbitrary or capricious as there were numerous inappropriate communications from her to Salazar to justify the transfer and that CTA was able to stop a previous transfer attempt by agreeing such communications would cease, and they did not. Radford acknowledged that she knew she could file a grievance on her own behalf. However, she did not file one.

On August 16, 2004, Shoemake sent a letter to the Director of Personnel Services protesting the sexual harassment investigation. On that same day, Anguiano spoke to the Board of Education protesting the investigation since a close friendship existed between Radford and Salazar. On August 26, 2004, Anguiano and Shoemake accompanied Radford to a meeting with District officials regarding the investigation's findings. Shoemake argued the report was flawed and that no discipline should result.

In August 2004, a student's grade was changed without Radford's input in violation of the Education Code.

In September 2004, Radford requested a copy of CTA's meeting minutes from the December 19, 2003, meeting from her Site Representative. CTA ignored her request.

On October 27, 2004, Shoemake appealed the investigation's findings. On December 8, 2004, the District upheld the investigation's findings.

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.]

The duty of representation is limited, and does not extend to extra-contractual forums. (Service Employees International Union (1997) PERB Decision No. 1219.) As such CTA's duty of fair representation does not extend to enforcement of the Education Code.

Here, CTA negotiated a settlement on Radford's behalf which prevented her involuntary transfer in 2003. Following that settlement, the Principal raised new allegations against Radford. CTA granted Radford's request to see an attorney, and provided her with representation during meetings, and spoke to the Board of Education on her behalf. The charge does not demonstrate CTA's decision not to file a grievance was arbitrary, but instead rationally based on the language of its collective bargaining agreement, which only requires that the transfer not be arbitrary or capricious. CTA's explanation that the existence of documents demonstrating Radford had communicated with Salazar and the fact that the parties had previously addressed this issue in 2003 is a rational basis for refusing to pursue the grievance. Thus, the charge fails to demonstrate CTA acted in an arbitrary, discriminatory or bad faith manner.

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 January 31, 2004, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Tammy Samsel
Regional Attorney

TLS