

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



HARRISON SHAMPINE, TOMMIE BROWN,
AND GALDA ORTIZ,

Charging Parties,

v.

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION & ITS CHAPTER 47,

Respondent.

Case No. LA-CO-1543-E

PERB Decision No. 2355

February 14, 2014

Appearances: Harrison Shampine, Tommie Brown, and Galda Ortiz, on their own behalf;
Sonja J. Woodward, Attorney, for California School Employees Association & its Chapter 47.

Before Martinez, Chair; Huguenin and Winslow, Members.

DECISION¹

WINSLOW, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Harrison Shampine (Shampine), Tommie Brown, and Galda Ortiz (collectively, Charging Parties) from the dismissal (attached) by the Office of the General Counsel of Charging Parties' first amended unfair practice charge. The first amended charge alleges that California School Employees Association & its Chapter 47 (CSEA or Chapter 47) violated the Education Employment Relations Act (EERA)² by failing to enforce the collective bargaining agreement, by not responding to members' interests, and by failing to

¹ PERB Regulation 32320(d) provides, in pertinent part: "Effective July 1, 2013, a majority of the Board members issuing a decision or order pursuant to an appeal filed under section 32635 [Board Review of Dismissals] shall determine whether the decision or order, or any part thereof, shall be designated as precedential." Having met the following criteria enumerated in the regulation, "(3) Modifies, clarifies or explains existing law or policy" and "(5) Addresses a legal or factual issue of continuing interest," the decision herein is designated as precedential. (PERB Regs. are codified at Cal. Code Regs., tit. 8, § 31001 et seq.)

² EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

conduct union meetings in accordance with its by-laws. The charge also alleged that CSEA failed to grant Champine's request for Chapter 47's financial records. The Office of the General Counsel dismissed the charge in its entirety for failure to state a prima facie case of a breach of CSEA's duty of fair representation and failure to provide its financial report to a CSEA member.

The Board has reviewed the record in its entirety and has fully considered the appeal and the response thereto. Based on this review, we find the warning and dismissal letters to be well-reasoned and in accordance with applicable law with respect to the disposition of the allegations concerning a breach of the duty of fair representation. Accordingly, we adopt those sections of the dismissal letter as the decision of the Board itself.

However, we find that Charging Parties have alleged sufficient facts to state a prima facie violation of EERA section 3546.5, i.e., failure to provide a financial report to members. We, therefore, reverse the General Counsel's dismissal of these allegations and order Chapter 47 to produce the financial records as defined in EERA section 3546.6 in accordance with the following discussion.

PROCEDURAL SUMMARY

This charge was initially filed on October 24, 2012, by three bargaining unit members who alleged that CSEA had failed in its efforts to force the Centinela Valley Union High School District (District) to employ bargaining unit members instead of substitutes in classified jobs. The charge also alleged that the District was not following seniority lists and laid off workers when there was a dire need for them. As for CSEA, Charging Parties alleged corruption, favoritism, "half hearted attempts at negotiating," and that it "failed to provide financial records. They say they are lost."

The Office of the General Counsel issued a warning letter on January 24, 2013, explaining that the charge failed to state a prima facie case for a breach of the duty of fair representation because the Charging Parties did not demonstrate that CSEA's decisions regarding contract enforcement were dishonest, unreasonable, arbitrary, discriminatory or in bad faith.

With respect to the request for financial information, the warning letter noted that the charge failed to establish the records were requested within 60 days after the end of CSEA's fiscal year and failed to specify the "type of 'financial records' requested by Shampine." For those reasons, according to the Office of the General Counsel, the charge failed to state a prima facie case for a violation of EERA section 3546.5, and the Charging Parties were provided an opportunity to amend the charge.

First Amended Charge

The first amended charge, filed on February 14, 2013, provided more detail but essentially complained of the same conduct: CSEA failed to adequately enforce the collective bargaining agreement; it failed to file unfair practice charges against the District; its president is inattentive and self-interested; it failed to properly communicate with employees regarding work hours issues; it does not adhere to its own by-laws, etc.

With regard to financial records, the first amended charge provided more detail and alleged that on October 10, 2012, Shampine, a steward, requested "financial records (Treasurer's Report)" from Union President Carmen Maria Rosas (Rosas).³ The charge alleged this document should "show the members the chapter funds, the income for the reporting period and should include all receipts. The reporting period would also show all

³ None of the Charging Parties' documents identify whether Rosas is president of CSEA or its Chapter 47, but CSEA's documents identify Rosas as president of Chapter 47.

disbursements, credit union, bank statements, mileage forms and credit cards if any.”

Shampine asked for these documents pursuant to CSEA’s legal obligation under EERA to keep accurate financial records and reports. Rosas informed Shampine that she would have the financial documents ready on October 12, 2012. When Shampine approached Rosas about the records on October 12, 2012, Rosas informed Shampine that she had no such documents and that the records had not been kept in the last 10 years.

As a remedy for the failure to provide financial records, the Charging Parties asked that there be a full investigation and an audit of Chapter 47, and that PERB require “this chapter to submit all financial documents as aforementioned.”

CSEA’s Response

CSEA filed a response on March 1, 2013, asserting that the first amended charge still does not provide a clear and concise statement of the charges pursuant to PERB Regulation 32615(a)(5), and failed to provide the “who, what, when, where, and how” facts required to constitute a prima facie violation of the duty of fair representation. At most, the charge alleges that CSEA has been negligent in handling internal matters and negotiations, and PERB has held that negligence is insufficient to establish a prima facie violation of the duty of fair representation.

With regard to the financial document request, CSEA asserts that Shampine was not clear with Rosas as to what he meant by “financial records” when he requested them. Rosas did not know what financial records Shampine was requesting, but she informed him that the financial records of the chapter were located at the home of former Chapter President Juan Carlo Gutierrez, where they still are to this day. CSEA further asserts that Shampine is not entitled to the financial documents he seeks. EERA section 3546.5 does not require

Chapter 47 to produce for members all the documents sought by Champine. His request is overbroad and the charge should be dismissed on that basis.

In neither position statement did CSEA assert that Champine's request for financial information was time-barred, or otherwise made too late in the year.

Dismissal Letter

After considering the first amended charge filed in response to the warning letter, the Office of the General Counsel dismissed the entire charge on March 22, 2013, because the charge did not allege sufficient facts to demonstrate that CSEA's action, or inaction, with respect to contract enforcement was an abuse of discretion, or without rational basis or devoid of honest judgment.

The Office of the General Counsel dismissed the allegations that CSEA failed to adhere to its bylaws, because PERB does not have jurisdiction over matters concerning internal union affairs unless they have a substantial impact on the relationship of bargaining unit employees to their employer, so as to give rise to a duty of fair representation. These alleged violations had no substantial impact on employer-employee relations, and therefore failed to state a prima facie case.

With regard to the allegation regarding failure to provide financial records, the Office of the General Counsel essentially repeated its warning letter, finding that the charge failed to establish that Champine's request for financial records was made within 60 days after the end of CSEA's fiscal year and should therefore be dismissed. The Office of the General Counsel also dismissed these allegations because it concluded that EERA section 3546.5 does not entitle Champine to all the documents he requested, and for that reason the charge failed to state a prima facie case.

Appeal of Dismissal

Charging Parties filed a timely appeal of the dismissal on April 16, 2013, alleging for the first time that Chapter 47 filed the grievance involving unit member Monique Demery (Demery) in September 2012; that Demery was replaced by a substitute worker, which was a violation of the collective bargaining agreement between the District and CSEA; and that the complaint over this alleged violation was never resolved. Although the appeal contends that Demery was not adequately represented by CSEA, the Charging Parties allege no facts supporting their contention.

With regard to Shampine's request for financial records, the appeal states that "[t]here is nothing in the law that states that we have to wait until the end of the year."

The appeal also complains that the Office of the General Counsel wrongfully credited CSEA's version of events concerning the statements allegedly made by Rosas.

CSEA's Response to the Appeal

In its response to the appeal, CSEA reiterates its earlier arguments, and objects to the new information included in the appeal that was not included in the first amended charge, asserting that Charging Parties could have, with reasonable diligence, alleged these new matters in the first amended charge. With regard to the Demery grievance, CSEA argues that the appeal does not cure the Charging Parties' failure, identified in the dismissal letter, to identify the person who filed the grievance on behalf of Demery. CSEA alleges that "[t]he Chapter itself cannot file a grievance but requires an agent to do so. Neither the First Amended Charge, nor the appeal, name that agent."

CSEA alleges that, contrary to the allegations in the first amended charge, the dismissal letter does not dispute that Rosas made the statements alleged in the first amended charge.

DISCUSSION

New Matters

PERB Regulation 32635, prescribing the content of appeals from dismissals of unfair practice charges, states in subsection (b):

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

Charging Parties failed to provide any good cause for including new charge allegations in their appeal. We, therefore, do not consider those allegations in our review of the appeal.

Financial Records

EERA section 3546.5 provides, in relevant part:

Every recognized or certified employee organization shall keep an adequate itemized record of its financial transactions and shall make available annually, to the board and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, signed and certified as to accuracy by its president and treasurer, or corresponding principal officers. In the event of failure of compliance with this section, any employee within the organization may petition the board for an order compelling such compliance, or the board may issue such compliance order on its motion.

The Office of the General Counsel dismissed the allegations concerning Shampine's request for CSEA's financial records on two grounds: (1) the charge failed to establish that a request for a financial report was made within 60 days after the end of CSEA's fiscal year, and (2) EERA section 3546.5 does not entitle Shampine to all of the documents he requested, which the General Counsel interpreted to include CSEA's treasurers report, Chapter 47 funds, the income for the reporting period, all receipts, disbursements, credit union, bank statements, mileage forms and credit cards, if any. In other words, Charging Parties' request for financial records was overbroad, in the General Counsel's view, and therefore not a valid request.

Timeliness

We disagree with the Office of the General Counsel's conclusion that EERA section 3546.5 establishes a 60-day window from the end of an employee organization's fiscal year within which a member must request the organization's financial report. The statute requires that the organization "make available" to the member (and to PERB) the financial report "within 60 days after the end of its fiscal year." Instead of requiring a member of an employee organization to request financial reports within 60 days of the end of the employee organization's fiscal year, we hold that the better reading of EERA section 3546.5 gives a union up to 60 days from the end of its fiscal year to prepare and make available reports required by EERA section 3546.5.

Nothing in the plain meaning of EERA section 3546.5 supports the Office of the General Counsel's view that a member must request the financial report within 60 days of the end of the fiscal year. An employee organization must make available to its members "a detailed written financial report" within 60 days after the end of the organization's fiscal year. This gives the organization up to 60 days to prepare such a report. If a member were to demand the report 45 days after the end of the fiscal year, the organization would not have a duty to produce it until the 61st day after the end of its fiscal year.

Pursuant to PERB Regulation 32602, any alleged violation of EERA, including EERA section 3546.5, is to be processed as an unfair practice charge.⁴ Therefore, the six-month statute of limitations found in EERA section 3541.5(a)(1) applies.⁵ The question then

⁴ Prior to 2006, former PERB Regulation 32125(b) provided the procedure to remedy an employee organization's failure to comply with EERA section 3546.5. However, that regulation was repealed in 2006, leaving the unfair practice charge as the sole method whereby an individual member could enforce his or her right under EERA section 3546.5.

⁵ PERB may not 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."

becomes: when does a violation of EERA section 3546.5 arise, when a member requests the financial report, or when the employee organization fails to make it available within 60 days of the end of its fiscal year?

The Board's decision in *Rio Teachers Association (Lucas)* (2011) PERB Decision No. 2157 (*Rio*) pp. 4-5, a case not considered by the Office of the General Counsel, suggests that a violation occurs when the employee organization refuses to provide the financial information upon a member's request. In that case, an individual bargaining unit member requested the employee organization provide her with financial reports for the current fiscal year and for the previous nine years.⁶ The organization refused to provide any reports. *Rio*, states that a violation occurs when the charging party knew or should have known that the employee organization "failed or refused to provide the requested financial report for the immediately preceding fiscal year." As a practical matter, not every member of an employee organization will be routinely and reliably informed of the date the organization's fiscal year ends. Enforcement of this statute, which was enacted for the benefit of employee organization members, who do not have the right to receive the financial data routinely and annually sent to agency fee payers, should therefore not turn on members keeping track of a date not always obvious to them and which could change, depending on whether the end of the fiscal year changes.

⁶ It is unclear from the decision in *Rio, supra*, PERB Decision No. 2157, whether the requesting party, Lynette Lucas, was a member of the employee organization, the Rio Teachers Association, as she is described only as "a member of the bargaining unit." (*Rio*, p. 2.) We take this opportunity to underscore that EERA section 3546.5 provides rights only to members of the employee organization. Non-member agency fee payers derive their right to financial information pursuant to *Chicago Teachers Union v. Hudson* (1986) 475 U.S. 292 and its progeny.

Nor do we read EERA section 3546.5 to require the employee organization to discharge its duty to “make available” by affirmatively distributing its financial report to members who do not request it. Thus, it is a member’s request that triggers the organization’s duty to provide the financial report, not the passing of the 60th day after the close of the organization’s fiscal year. If an unfair practice charge is filed within six months of the organization’s refusal or failure to provide its financial report to a member who has asked for it, the charge is timely. We reiterate the limitation articulated in *Rio, supra*, PERB Decision No. 2157, members are entitled only to financial reports for the immediate preceding fiscal year. Requests for financial reports must be renewed each fiscal year.

This charge alleged that Shampine learned on October 12, 2012, that CSEA refused to provide the financial documents he requested. The charge was filed 12 days later. It is therefore timely under *Rio, supra*, PERB Decision No. 2157.

Contents of a Valid Request

Regarding the second ground for dismissal, we disagree with the Office of the General Counsel’s conclusion that a union member’s request for “financial records (Treasurer’s Report)” does not satisfy as adequate notice to the union of a request for the union’s financial report required under EERA section 3546.5.

As a preliminary matter, the dismissal letter does not directly address whether the allegation that Shampine requested “financial records (Treasurer’s Report)” from Rosas indicates that Shampine used this exact terminology when speaking to Rosas. However, regardless of what words Shampine used in his request, the charge alleges sufficient facts that Shampine reasonably put CSEA on notice that he was requesting the financial report within the meaning of EERA section 3546.5.

We also disagree with the Office of the General Counsel's conclusion that, since the information the Charging Parties believed to be included in the financial report is not governed by EERA section 3546.5 (e.g., credit card information, bank statements, mileage forms, etc.), the request for such report itself is not governed by EERA section 3546.5. Regardless of the information Shampine believes the documents "should" or "would" show (or whether that information is governed by EERA section 3546.5), a member's request for a "Treasurer's Report" constitutes a sufficient request for the detailed written financial report envisioned by EERA section 3546.5.

This conclusion is borne out in the PERB authority to which the Office of the General Counsel cites in the dismissal letter, viz., *State Employees Trade Council United (Ventura et al.)* (2009) PERB Decision No. 2069-H (*Ventura*).⁷

In *Ventura, supra*, PERB Decision No. 2069-H, charging party Allen Rutherford (Rutherford) asked a representative of the State Employees Trade Council United (Council) in September 2008 to view the Council's annual report to get an idea of the cost of a joint apprenticeship and training committee program relative to the overall Council budget (the Council's previous fiscal year ended December 31, 2007). The Council representative replied that the 2007 annual report was unavailable because it was still at the auditor, but that he did have some quarterly reports from 2006 that Rutherford could examine. Rutherford requested that the Council representative send him what he could get. However, Rutherford never received any 2006 quarterly reports.

⁷ This case arose under the Higher Education Employer-Employee Relations Act (HEERA). (HEERA is codified at Gov. Code, § 3560 et seq.) Although the decision references HEERA section 3587, the only difference between HEERA section 3587 and EERA section 3546.5, is EERA requirement that the financial report be "signed and certified as to accuracy by its president and treasurer," as opposed to HEERA's requirement that the report be "certified" but not "signed." The statutes are otherwise (and for our purposes) identical.

After the unfair practice charge was filed, Rutherford received the third quarterly report for 2008. On November 25, 2008, Rutherford e-mailed the Council's secretary-treasurer and asked her when the fiscal year ended. Additionally, he requested the 2007 annual report. Later that day, the secretary-treasurer e-mailed Rutherford and informed him that the report for 2007 was not yet completed. She further stated that she would forward the report to him upon receipt. However, Rutherford never received the 2007 annual report.

In *Ventura, supra*, PERB Decision No. 2069-H, PERB stated:

Charging Parties do not need to demonstrate whether [the Union's] annual financial report or its quarterly reports qualify as "a balance sheet and an operating statement." Rather, all Charging Parties must do is request the "financial report." It is the recognized or certificated employee organization that must have a financial report in the form of a balance sheet and an operating statement.

The fact that Charging Parties did not utilize the specific verbiage of 'financial report' does not change our conclusion. On September 9, 2008, Rutherford requested a copy of the [Union] annual report. He again requested a copy of the financial document on November 25, 2008. [Union] informed Rutherford that the 2007 annual report was still being audited and was not complete. It is clear that [Union] understood Charging Parties to have requested the financial report specified in HEERA section 3587. As such, Charging Parties requested a financial report as provided for under HEERA section 3587.

(*Ventura, supra*, PERB Decision No. 2069-H, p. 11.)

The dismissal letter cites to *Ventura, supra*, PERB Decision No. 2069-H for the proposition that "[a]n employee alleging that the employee organization failed to produce a record of its financial transactions need not have made a specific request for the employee organization's 'financial report' where the employee organization understood the charging party to have requested the reports specified in the statute." However, the dismissal is not consistent with this standard. We also note that in *Ventura*, the union member made his

request for the union's 2007 annual report subsequent to the 60-day period following the end of the Council's 2007 fiscal year, yet the member was still entitled to the report.

Under *Ventura, supra*, PERB Decision No. 2069-H, Chapter 47 reasonably should have understood Shampine to have requested the financial report for Chapter 47's previous fiscal year specified in EERA section 3546.5. Charging Parties have, therefore, alleged sufficient facts to warrant the remedy we discuss below.

Remedy

Under most circumstances where the Board itself overturns a dismissal of a charge, it orders the case remanded to the Office of the General Counsel for the issuance of a complaint. However, EERA section 3546.5 gives the Board itself the authority to issue a compliance order on its own motion. We find it is appropriate to do so in this case, instead of remanding for the issuance of a complaint. Because the unfair practice charge was timely filed as to the request for financial records for the immediately preceding fiscal year, and because CSEA's position statement indicates that the documents exist and are located at the home of its former president, it is appropriate to order CSEA and its Chapter 47 to produce the documents required by EERA section 3546.5 for the fiscal year in question, that is "a detailed written financial report thereof in the form of a balance sheet and an operating statement."

ORDER

Upon the foregoing discussion and the record as a whole, and pursuant to the authority granted the Public Employment Relations Board (Board) in section 3546.5 of the Education Employment Relations Act, the Board orders the California School Employees Association & its Chapter 47 (CSEA) to immediately provide Harrison Shampine (Shampine) with a detailed written financial report in the form of a balance sheet and an operating statement for the CSEA fiscal year ending prior to October 10, 2012, date of Shampine's request. The Board

REMANDS compliance with the Board's Order herein to the Office of the General Counsel.

The Board AFFIRMS the dismissal of Champine, Tommie Brown, and Galda Ortiz' remaining allegations.

Chair Martinez and Member Huguenin joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

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March 22, 2013

Harrison Shampine

Re: *Harrison Shampine, et al. v. California School Employees Association & its Chapter 47*
Unfair Practice Charge No. LA-CO-1543-E
DISMISSAL LETTER

Dear Mr. Shampine:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on October 24, 2012. Harrison Shampine (Shampine), Tommie Brown (Brown) and Galda Ortiz (Ortiz) (collectively Charging Parties)¹ allege that the California School Employees Association & its Chapter 47 (Union or Respondent) violated the Educational Employment Relations Act (EERA or Act)² by breaching its duty of fair representation.

Charging Parties were informed in the attached Warning Letter dated January 24, 2013 (Warning Letter), that the above-referenced charge did not state a prima facie case. Charging Parties were advised that, if there were any factual inaccuracies or additional facts that would correct the deficiencies explained in that letter, they should amend the charge. Charging Parties were further advised that, unless they amended the charge to state a prima facie case or withdrew the charge on or before February 8, 2013, the charge would be dismissed.

On February 14, 2013, the Charging Parties filed a timely First Amended Charge.³

¹ The filings with the charge contain the signature of each individual. PERB will consider each individual as a Charging Party.

² EERA is codified at Government Code section 3540 et seq. The text of the EERA and PERB Regulations may be found at www.perb.ca.gov. PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

³ The undersigned granted Charging Parties an extension of time until February 15, 2013 to file a First Amended Charge.

FACTS AS ALLEGED IN THE FIRST AMENDED CHARGE

At an unspecified time, Union President Carmen Maria Rosas (Rosas) was asked by an unspecified individual, "What is being done about the District's disregard for the collective bargaining contract signed by CSEA Chapter 47 and Centinela Valley Union High School District (District)?"

From July 2, 2012 through August 30, 2012, a Union member employed as a Behavior Management aide "was not allowed to work a summer assignment." A grievance was filed concerning the District's conduct in relation to the Behavior Management aide.⁴ According to the charge, the grievance "went unanswered " by the Union. According to the charge, "it has been questioned [that] the Union allows everyone but the aides [to receive] full hours during the extended school year."

On September 26, 2012, the Union held a meeting with bargaining unit members. At the September 26, 2012, meeting, Rosas stated that "she was in ongoing talks with the [District] board." She also stated that "at one point, the [District] board blew her off." Charging Parties overheard Rosas' statement. The charge states that Rosas "was to[o] busy securing her own position to deal with member issues."

On September 26, 2012, Rosas stated that "the reason that she retained her job was because of the work that she had done with the Union."

On October 10, 2012, Shampine, a Union steward, "requested financial records (Treasurer's Report) from the Union President, Carmen Rosas." The Treasurer's Report purports to "show the members the chapter funds, the income for the reporting period and should include all receipts. The reporting period would also show all disbursements, credit union, bank statements, mileage forms and credit cards, if any." According to the charge, it is "a legal obligation for each chapter under [EERA] to keep accurate financial reports and records."

On October 12, 2012, Shampine "approached Ms. Rosas about the records." Rosas "informed [Shampine] that she had no such documents and that records had not been kept in the last 10 years." Describing the Union's conduct, the charge states the following:

It must be noted that this Union is unorganized and does not conduct the meetings using the bylaws. There are never any minutes read and there is no accounting from the Treasurer at the meetings. As a matter of [fact,] there was no Treasurer or minutes read at the meeting [on]... September 26, 2012, October 19, 2012, November 16, 2012, December 12, 2012, or January 9, 2013. The secretary has been witnessed sleeping at these

⁴ It is unclear from the charge whether the Union or the Behavior Management aide filed the grievance.

meetings. There does not seem to be any [talking] going on. The Chapter [introduced new Treasurers] at the December 12, 2012, meeting.

On December 23, 2012, Rosas “had a conversation with” Shampine. Rosas told Shampine that “she was sorry for being selfish.” Charging Parties overheard Rosas’ statement.

The Marysville Joint Unified Union chapter “was steadfast and forceful in their commitment to their Union members when their district laid off every single six-hour para-educator.” The Marysville district “months later, re-hired about half of them back at half the hours because it would save the [Marysville] district the cost of the workers medical benefits. Marysville district backed down and reinstated all six-hour positions, including medical benefits.”

THE UNION’S POSITION⁵

The Union filed a position statement in response to the First Amended Charge on March 1, 2013. In its position statement, the Union contends: (1) the Charging Parties have failed to provide a clear and concise statement of the charge; (2) Shampine is not entitled to the financial documents that he seeks; and (3) the charge fails to show a prima facie violation of the duty of fair representation.

DISCUSSION

The Union’s Duty of Fair Representation

Charging Parties have alleged that the exclusive representative denied Charging Parties 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 Unified District Teachers Association, CTA/NEA (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 Parties 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.]

⁵ A Board agent is permitted to consider undisputed facts supplied by a respondent during charge investigation. (*Service Employees International Union #790 (Adza)* (2004) PERB Decision No. 1632-M.) To the extent there are any factual disputes, those questions are properly resolved through PERB’s hearing processes. (*Golden Plains Unified School District* (2002) PERB Decision No. 1489.)

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. [Citations omitted.]

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.

(*Reed District Teachers Association, CTA/NEA (Reyes)* (1983) PERB Decision No. 332, p. 9, quoting *Rocklin Teachers Professional Association (Romero)* (1980) PERB Decision No. 124; emphasis in original.)

With regard to when "mere negligence" might constitute arbitrary conduct, the Board observed in *Coalition of University Employees (Buxton)* (2003) PERB Decision No. 1517-H that, under federal precedent, a union's negligence breaches the duty of fair representation "to cases in which the individual interest at stake is strong and the union's failure to perform a ministerial act completely extinguishes the employee's right to pursue his claim." (Quoting *Dutrisac v. Caterpillar Tractor Co.* (9th Cir. 1983) 749 F.2d 1270, at p. 1274; see also *Robesky v. Quantas Empire Airways, Ltd.* (9th Cir. 1978) 573 F.2d 1082.)

Here, the First Amended Charge adds to the original charge the allegations that the Union breached its duty of fair representation by engaging in the following conduct: (1) failing to "answer" a grievance filed sometime after August 30, 2012; (2) Rosas was too busy "securing her own position to deal with member issues"; (3) Rosas' December 23, 2012, admission that she had been "selfish"; (4) failing to be "steadfast and forceful in their commitment to Union members"; and (5) failing to adhere to Union bylaws.

1. Failing to "Answer" a Grievance

PERB Regulation 32615(a)(5) requires, inter alia, that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." In doing so, a charging party should allege sufficient facts to establish the "who, what, when, where and how" of an unfair practice. (*State of California (Department of Food and Agriculture)* (1994) PERB Decision No. 1071-S, citing *United Teachers-Los Angeles (Ragsdale)* (1992) PERB Decision No. 944.) Mere legal conclusions are not sufficient to state a prima facie case. (*Ibid.*; *Charter Oak Unified School District* (1991) PERB Decision No. 873.)

Here, the First Amended Charge fails to identify who filed the grievance, when the grievance was filed, and in what manner the District failed to “answer” the grievance. Accordingly, as to this allegation, the charge fails to state a prima facie case.

Moreover, PREB will dismiss charges that the duty of fair representation has been breached by a refusal to pursue a grievance, if the exclusive representative made an honest, reasonable determination that the grievance lacked merit. (*Sacramento City Teachers Association (Fanning, et al.)* (1984) PERB Decision No. 428.) The burden is on the charging party to show how the exclusive representative abused its discretion, not on the union to show how it properly exercised its discretion. (*United Teachers – Los Angeles (Wylar)* (1993) PERB Decision No. 970.) Here, the charge alleges that the Union failed to “answer” a grievance, but fails to state additional facts to demonstrate how the Union abused its discretion.

2. Rosas Was Too Busy, Rosas’ Admission to Being “Selfish,” and the Lack of Commitment to Union Members

PERB Regulation 32615(a)(5) requires, inter alia, that an unfair practice charge include a “clear and concise statement of the facts and conduct alleged to constitute an unfair practice.”

The First Amended Charge fails to allege sufficient facts to establish how each of these allegations demonstrate that the Union acted arbitrarily, discriminatory, or in bad faith. Further, as to these allegations, the charge fails to include, at a minimum, an assertion of sufficient facts from which it becomes apparent how or in what manner the Union’s action or inaction was without a rational basis or devoid of honest judgment. Thus, as to these allegations, the charge fails to state a prima facie case.

3. Failure to Adhere to Bylaws

It is well-established that PERB does not have jurisdiction over matters concerning internal union affairs unless they have a substantial impact on the relationship of bargaining unit employees to their employer so as to give rise to a duty of fair representation. (*Service Employees International Union, Local 99 (Kimmitt)* (1979) PERB Decision No. 106.) In *California State Employees Association (Hutchinson)* (1999) PERB Decision No. 1369-S, the Board found no substantial impact on the employer-employee relationship where the union conducted elections outside the timeframe required by union bylaws and improperly installed union officers in violation of union bylaws because the charge failed to show a substantial impact on employer-employee relations.

Here, the First Amended Charge alleges that the Union failed to adhere to its bylaws by not reading minutes at the Union meetings and not having the Treasurer account for Union finances during meetings. This allegation appears to concern solely internal union affairs and has no substantial impact on employer-employee relations. Accordingly, as to this allegation, the charge fails to state a prima facie case.

Request for Financial Documents

EERA requires a recognized or certified employee organization to keep an adequate itemized record of its financial transactions. (Gov. Code § 3546.5.) A detailed written financial report of such transactions, in the form of a balance sheet and an operating statement, must be made available annually to PERB and to the employees who are members of the organization within 60 days after the end of the employee organization's fiscal year. (Gov. Code § 3546.5.) An employee alleging that the employee organization failed to produce a record of its financial transactions need not have made a specific request for the employee organization's "financial report" where the employee organization understood the charging party to have requested the reports specified in the statute. (*State Employees Trades Council United (Ventura, et al.)* (2009) PERB Decision No. 2069-H.) The report must be signed and certified as to accuracy by the organization's president and treasurer, or corresponding principal or comparable officers. (Gov. Code § 3546.5.)

Here, the First Amended Charge alleges that, on October 10, 2012, Shampine requested a "Treasurer's Report" from Rosas. The charge alleges that the "Treasurer's Report" contains: (1) chapter funds; (2) income for the reporting period; (3) receipts; (4) disbursements; (5) credit union information; (6) bank statements; (7) mileage forms; and (8) credit cards. The charge fails to establish that Shampine's request was made within 60 days after the end of the Union's fiscal year. Moreover, EERA section 3546.5 does not entitle Shampine to all of the requested documents. As such, this allegation fails to state a prima facie case.

Therefore, the charge is hereby dismissed based on the facts and reasons set forth in this Dismissal Letter and the Warning Letter.

Right to Appeal

Pursuant to PERB Regulations, Charging Parties 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. (Cal. Code Regs., tit. 8, § 32635, subd. (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 during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of PERB 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. (Cal. Code Regs., tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(916) 322-8231
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. (Cal. Code Regs., tit. 8, § 32635, subd. (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 Cal. Code Regs., tit. 8, § 32140 for the required contents.) The document will be considered properly "served" when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, § 32135, subd. (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. (Cal. Code Regs., tit. 8, § 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,

M. SUZANNE MURPHY
General Counsel

By

James Coffey
Regional Attorney

Attachment

cc: Sonja J. Woodward, Attorney

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95811-4124
Telephone: (916) 327-7242
Fax: (916) 327-6377



January 24, 2013

Harrison Shampine

Re: *Harrison Shampine, et al. v. California School Employees Association & its Chapter 47*
Unfair Practice Charge No. LA-CO-1543-E
WARNING LETTER

Dear Mr. Shampine:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on October 24, 2012. Harrison Shampine (Shampine), Tommie Brown (Brown) and Galda Ortiz (Ortiz) (Charging Parties)¹ allege that the California School Employees Association & its Chapter 47 (Union or Respondent) violated the Educational Employment Relations Act (EERA or Act)² by breaching its duty of fair representation.

FACTS AS ALLEGED

The Union is the exclusive representative of a wall-to-wall unit of approximately 230 classified employees at the Centinela Valley Union High School District (District), including Shampine, Brown and Ortiz.³ The Union and the District are parties to a collective bargaining agreement that expires on June 30, 2014.

The charge consists of approximately two, hand written pages. The hand written pages state, in relevant part, the following:

The Union has failed in efforts to stop the District from the unlawful practice of allowing substitutes to work in the place of regular employees. The District is even allowing long-term teacher substitutes to work in classified jobs. They are not following the seniority lists, overtime assignments, and have laid

¹ The filings with the charge contain the signature of each individual. PERB will consider each individual as a Charging Party.

² EERA is codified at Government Code section 3540 et seq. The text of the EERA and PERB Regulations may be found at www.perb.ca.gov.

³ Based on the facts provided, it appears that Charging Parties are members of the Union, and not agency fee payers.

off workers when there is a dire need in the classroom and other sites. There is much corruption in our local. The Union president stated in our September meeting⁴ that she was given the job as a developer because of her work with the Union. This statement was witnessed by everyone at the meeting. Jobs should not be given because of favoritism. We are not being represented fully. There seems to be half-hearted attempts at negotiating. We need help with this. This chapter is running amok. We don't know how much money we have. There is no accountability. The board's⁵ representative never ventures into the sites to see what's occurring. On October 10, 2012, Harrison Shampine requested financial records. He was told that he would have them Friday, October 12, 2012. When he inquired that Friday, he was informed that the documents are lost. We need up to date information. These people on this board need to be audited. If there are questions, please contact us.

The charge also states, in relevant part:

The president of [the Union] has failed to negotiate with the employer. She said that the District blew her off and she just left the meeting. She has not exhausted any other avenue like filing [an unfair practice charge]. She and the board have failed to provide financial records. They say they are lost. This Union has no treasurer, minutes are not being read. Members were coerced by the Union by using "scare tactics." They informed the members that jobs will be lost. The Union did not inform the members of the impact of the furloughs on their benefits. The president and the board are using their positions in the union to gain favors in the school District. The president of the Union was given a job by the board. A job for which she was in a totally different classification. She tested for the job and interfered with testing by approaching the test clerk at the site. She was an applicant at that time and not the union president. Juan Carlos' daughter, Alma Gutierrez, was and is offered a job as an assistant food service manager. Juan Carlos is the past president. These are favors. All alleged to put in place in September 2012.

⁴ It is unclear from the charge what year this "September" meeting took place. Examining the allegations in the light most favorable to Charging Parties, it will be assumed that the meeting took place in September 2012.

⁵ The "board" appears to refer to the Chapter representatives.

THE UNION'S POSITION⁶

The Union filed a position statement on November 30, 2012. In its position statement, the Union contends the following: (1) the charge fails to provide a clear and concise statement of the facts; (2) the District and the Union have not negotiated since December 2011, so any allegations regarding the Union's breach of its duty of fair representation as it relates to negotiations is beyond the statute of limitations; (3) some of the allegations relate to the conduct by the District; and (4) the charge fails to state a prima facie case because, at most, the charge alleges negligence by the Union.

DISCUSSION

The Union's Duty of Fair Representation

Charging Parties have alleged that the exclusive representative denied them 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 Unified District Teachers Association, CTA/NEA (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, a 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. [Citations omitted.]

⁶ A Board agent is permitted to consider undisputed facts supplied by a respondent during charge investigation. (*Service Employees International Union #790 (Adza)* (2004) PERB Decision No. 1632-M.) To the extent there are any factual disputes, those questions are properly resolved through PERB's hearing processes. (*Golden Plains Unified School District* (2002) PERB Decision No. 1489.)

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.

(*Reed District Teachers Association, CTA/NEA (Reyes)* (1983) PERB Decision No. 332, p. 9, quoting *Rocklin Teachers Professional Association (Romero)* (1980) PERB Decision No. 124; emphasis in original.)

With regard to when "mere negligence" might constitute arbitrary conduct, the Board observed in *Coalition of University Employees (Buxton)* (2003) PERB Decision No. 1517-H that, under federal precedent, a union's negligence breaches the duty of fair representation "to cases in which the individual interest at stake is strong and the union's failure to perform a ministerial act completely extinguishes the employee's right to pursue his claim." (Quoting *Dutrisac v. Caterpillar Tractor Co.* (9th Cir. 1983) 749 F.2d 1270, at p. 1274; see also *Robesky v. Quantas Empire Airways, Ltd.* (9th Cir. 1978) 573 F.2d 1082.)

PERB Regulation 32615(a)(5)⁷ requires, inter alia, that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." In doing so, a charging party should allege sufficient facts to establish the "who, what, when, where and how" of an unfair practice. (*State of California (Department of Food and Agriculture)* (1994) PERB Decision No. 1071-S, citing *United Teachers-Los Angeles (Ragsdale)* (1992) PERB Decision No. 944.) Mere legal conclusions are not sufficient to state a prima facie case. (*Ibid.*; *Charter Oak Unified School District* (1991) PERB Decision No. 873.)

Here, the charge appears to allege that, by engaging in the following conduct, the Union breached its duty of fair representation: (1) the Union chapter president was "[blown] off" by the District at a negotiations meeting and the chapter president has failed to "exhaust any other avenue like filing [an unfair practice charge];" (2) the Union failed to prevent the District from using substitutes in place of bargaining unit members; (3) the Union engaged in "scare tactics" to coerce Union members; (4) the Union failed to inform members of the impact of furlough days on benefits; and (5) Union chapter presidents have received benefits due to "favoritism."

⁷ PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

1. Union's Failure to Exhaust Remedies Such as Filing an Unfair Practice Charge

Here, the charge appears to allege that the Union "failed to exhaust remedies such as filing an unfair practice charge" in response to the District's apparent refusal to negotiate. The charge fails to provide a date as to when the meeting in question occurred in order for PERB to determine whether the charge was filed within the six-month statutory period. In a duty of fair representation case, the statute of limitations begins to run when the charging party knew or should have known that further assistance from the union was unlikely. (*California State Employees Association (Chen)* (2005) PERB Decision No. 1736-S.) As such, the charge fails to state sufficient facts for PERB to determine whether the alleged conduct falls within the statute of limitations. (PERB Regulation 32615(a)(5).)

Moreover, it is well-established that an exclusive representative enjoys a wide range of bargaining discretion. (*Mount Diablo Education Association (DeFrates)* (1984) PERB Decision No. 422.) The exclusive representative is not required to satisfy all union members, and is not obligated to bargain all items at the request of union members. (*Ibid.*) There is no breach of the duty of fair representation if the exclusive representative refuses to pursue an unfair practice, so long as the exclusive representative made an honest, reasonable determination that the charge lacks merit. (*Sacramento City Teachers Association (Fanning, et al.)* (1984) PERB Decision No. 428.) The burden is on the charging party to show that the union abused its discretion, not on the union to show how it properly exercised its discretion. (*United Teachers – Los Angeles (Wylar)* (1993) PERB Decision No. 970.)

In this case, Charging Parties' have failed to meet their burden to demonstrate that the Union abused its discretion by not filing an unfair practice charge when the District refused to negotiate. Absent facts demonstrating that the Union's decision not to pursue the unfair practice was dishonest or unreasonable, this allegation does not state a prima facie case.

2. Failure to Prevent the District From Using Substitutes to Replace Unit Members

Here, the charge fails to provide facts to show that the Union's failure to prevent the District from using substitute teachers to replace unit members was arbitrary, discriminatory or in bad faith. The charge also fails to demonstrate how the alleged failure was without rational basis or honest judgment. (*United Teachers of Los Angeles (Collins)*, *supra*, PERB Decision No. 258.) Without facts to demonstrate that the Union acted in concert with the District, or tacitly allowed the District to replace unit members with substitute teachers, the charge fails to state a prima facie case. (PERB Regulation 32615(a)(5).)

3. Usage of "Scare Tactics"

Here, the charge fails to allege when the Union representatives engaged in "scare tactics" to coerce Union members and thus, the charge fails to establish that the alleged conduct occurred within the six-month statute of limitations. The charge also fails to allege how the Union engaged in the "scare tactics." Because the charge fails to provide evidence of when the

alleged conduct occurred and whether the conduct was unlawful, the charge fails to state a prima facie case. (PERB Regulation 32615(a)(5).)

4. Failing to Inform Members of Impact of Furlough Days

Here, the charge fails to show how the Union's alleged failure to inform members of the impact of furlough days was in bad faith. Further, the charge fails to allege when the furlough days were implemented and how the Union's failure to inform members of the impact of furlough days constitutes more than mere negligence. Because there are insufficient facts to determine approximately when the alleged failure to inform the members occurred, and because the charge fails to demonstrate how the failure was in bad faith or amounted to more than mere negligence, the allegation does not state a prima facie case. (*United Teachers of Los Angeles (Collins)*, *supra*, PERB Decision No. 258.)

5. Favoritism Benefits

Here, the charge fails to provide facts to demonstrate how any employment appointments given to chapter presidents or their relatives by the District were in bad faith, or how the employment appointments relate to the Union's duty of fair representation. As such, as to this allegation, the charge fails to state a prima facie case. (PERB Regulation 32615(a)(5).)

Lost "Financial Records"

EERA requires a recognized or certified employee organization to keep an adequate itemized record of its financial transactions. (Government Code § 3546.5.) A detailed written financial report of such transactions, in the form of a balance sheet and an operating statement, must be made available annually to PERB and to the employees who are members of the organization within 60 days after the end of the employee organization's fiscal year. (Government Code § 3546.5.) An employee alleging that the employee organization failed to produce a record of its financial transactions need not have made a specific request for the employee organization's "financial report" where the employee organization understood the charging party to have requested the reports specified in the statute. (*State Employees Trades Council United (Ventura, et al.)* (2009) PERB Decision No. 2069-H.) The report must be signed and certified as to accuracy by the organization's president and treasurer, or corresponding principal or comparable officers. (Government Code § 3546.5.)

Here, the charge appears to allege that the Union lost "financial records." According to the charge, on October 10, 2012, Shampine requested "financial documents" from the Union. On October 12, 2012, the Union told Shampine that the documents were lost.

The charge fails to establish that Shampine's request was made within 60 days after the end of the Union's fiscal year, or specify the type of "financial records" requested by Shampine. Accordingly, this allegation fails to provide sufficient evidence to state a prima facie case.

For these reasons the charge, as presently written, does not state a prima facie case.⁸ If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, Charging Parties may 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 an authorized agent of Charging Parties. 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 an amended charge or withdrawal is not filed on or before **February 8, 2013**,⁹ PERB will dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

James Coffey
Regional Attorney

JC

⁸ In *Eastside Union School District* (1984) PERB Decision No. 466, the Board explained that a prima facie case is established where the Board agent is able to make “a determination that the facts as alleged in the charge state a legal cause of action and that the charging party is capable of providing admissible evidence in support of the allegations. Consequently, where the investigation results in receipt of conflicting allegations of fact or contrary theories of law, fair proceedings, if not due process, demand that a complaint be issued and the matter be sent to formal hearing.” (*Ibid.*)

⁹ A document is “filed” on the date the document is **actually received** by PERB, including if transmitted via facsimile. (PERB Regulation 32135.)