

191 Cal.Rptr. 264, 10 Ed. Law Rep. 665

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DAVID W. LINK et al., Plaintiffs and Appellants,

v.

ANTIOCH UNIFIED SCHOOL DISTRICT et al., Defendants and Respondents.

JUNE BIANCHINI et al., Plaintiffs and Appellants,

v.

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION et al., Defendants and Respondents.

Civ. No. 52776., Civ. No. A015006.

Court of Appeal, First District, Division 5, California.

May 6, 1983.

## SUMMARY

Public school employees who were not union members were required, pursuant to collective bargaining agreements between certain teachers' unions and the school districts who employed the employees, to pay a "service fee" not to exceed the amount of union dues, as authorized by [Gov. Code, § 3540.1](#), subd. (i)(2). The employees filed separate lawsuits alleging that the service fee requirement was unconstitutional on its face and as applied to them. The respective trial courts dismissed the complaints, concluding that the alleged unconstitutional grievances arguably constituted unfair labor practices, which were within the exclusive jurisdiction of the Public Employment Relations Board, and that plaintiffs should have first exhausted their administrative remedies before seeking judicial relief. (Superior Court of Contra Costa County, No. 185356, Richard P. Calhoun, Judge, and Superior Court of San Mateo County, No. 254375, John J. Bible, Judge.)

The Court of Appeal affirmed. The court held that the board had initial jurisdiction over plaintiffs' claims, despite plaintiffs' allegations that the constitutional violations raised in their complaints did not constitute "unfair practices" as defined by [Gov. Code, §§ 3541.5, 3543.5](#) and [3543.6](#), and that plaintiffs were required to exhaust their administrative remedies before seeking relief in court. (Opinion by Low, P. J., with King and Haning, JJ., concurring.) \*766

## HEADNOTES

Classified to California Digest of Official Reports

([1a](#), [1b](#)) Schools § 32--Teachers and Other Employees--Employer-employee Relations--Grievances Which May Be Said to Constitute Unfair Practices-- Exhaustion of Administrative Remedies.

Public school employees who were not union members, but who, pursuant to collective bargaining agreements between certain teachers' unions and the school districts that employed them, were required to pay a "service fee" not to exceed the amount of union dues, as authorized by Gov. Code, § 3540.1, subd. (i)(2), were required to bring their dispute over the fee to the Public Employment Relations Board before they could challenge the constitutionality of the fee requirement in court. The constitutional violations raised by the public school employees were within the jurisdiction of the board, despite the claim that these constitutional violations did not constitute "unfair practices" as defined by Gov. Code, §§ 3541.5, 3543.5 and 3543.6. The board is not limited to investigating charges defined as "unlawful" under §§ 3543.5 and 3543.6. Under Gov. Code, § 3541.3, subd. (i), the board has the power to not only investigate unfair practices but also to investigate alleged violations of the Education

Employment Regulations Act (Gov. Code, § 3540 et seq.), and to take such action and make such determinations as the board deems necessary to effectuate the policies of the act. Looking beyond the constitutional label given to the public school employees' grievances, the substance of the conduct complained of may also constitute unfair practices, which arguably could be resolved by a board ruling.

[See Cal.Jur.3d, Schools, § 366; Am.Jur.2d, Schools, § 131.]

(2) Schools § 32--Teachers and Other Employees--Employer-employee Relations--Public Employment Relations Board--Jurisdiction.

The Public Employment Relations Board has exclusive initial jurisdiction over alleged labor relations grievance by a public school employee when the grievance may be said to constitute unfair practices; when the board can grant relief equivalent to that available in court; and when the Legislature intended the board to exercise its jurisdiction.

#### COUNSEL

A. Roger Jeanson, Haas & Najarian, David T. Bryant and Rex H. Reed for Plaintiffs and Appellants. \*767

Penn Foote, Kirsten L. Zerger, Ray Hansen, Siona D. Windsor, Peter A. Janiak, Madalyn J. Frazzini, E. Luis Saenz, Maureen C. Whelan and Janae H. Novotny for Defendants and Respondents.

Jeffrey Sloan, Dennis M. Sullivan, Andrea L. Biren and Elaine B. Feingold as Amici Curiae on behalf of Defendants and Respondents.

LOW, P. J.

In this consolidated appeal we are asked to decide whether plaintiffs were required to bring their disputes over the compulsory organizational service fee to the Public Employment Relations Board (PERB) before they can challenge the constitutionality of that fee requirement in court. We conclude that the PERB has initial jurisdiction over these matters and plaintiffs are requirement is unconstitutional on its face and as applied to them. Specifically, they contended that a portion of the fee is used for ideological and political pur-

The plaintiffs in the Link lawsuit (hereinafter Link) are public school employees for defendant Antioch Unified School District. The plaintiffs in the Bianchini lawsuit (hereinafter Bianchini) are public school employees for the defendant Jefferson School District. Other defendants include the Antioch Education Association (AEA) and the California School Employees Association (CSEA) and their affiliates, the California Teachers Association and the National Education Association. The AEA is the exclusive bargaining representative for all teachers in the Antioch Unified School District and the CSEA is the exclusive bargaining representative for all classified employees in the Jefferson School District. Neither the Link plaintiffs nor the Bianchini plaintiffs are union members.

Pursuant to collective bargaining agreements negotiated between the unions and the school districts, nonunion employees were required to pay a "service fee" not to exceed the amount of union dues. This "service fee" provision was authorized by the Education Employment Relations Act ([Gov. Code, § 3540](#) et seq.). [Section 3540.1](#), subdivision (i)(2) provides, inter alia: "[A]n employee, as a condition of continued employment, [must] either [1] join the recognized or certified employee organization, or ... pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of such organization ...."

In separate civil actions, Link and Bianchini alleged that the service fee requirement is unconstitutional on its face and as applied to them. Specifically, they contended that a portion of the fee is used for ideological and political purposes, \*768 not approved by plaintiffs, and is unrelated to collective bargaining, contract administration and grievance adjustment. As a result, plaintiffs argue, the service fee provision violates their rights of substantive due process and their rights of free speech and free association.

In dismissing the complaints, the respective trial courts concluded that the alleged unconstitutional grievances arguably constituted unfair labor practices which are within the exclusive jurisdiction of the PERB and that plaintiffs should have first exhausted their administrative remedies before seeking judicial relief.

(1a) On appeal, plaintiffs allege that the constitutional violations raised in their complaints do not constitute "unfair practices" as defined by [Government Code sections 3541.5, 3543.5 and 3543.6](#) and they are outside the jurisdiction of the PERB. Plaintiffs contend that the PERB could not satisfy the three-part test for preemption which was enunciated in [San Diego Teachers Assn. v. Superior Court \(1979\) 24 Cal.3d 1 \[154 Cal.Rptr. 893, 593 P.2d 838\]](#).

(2) The PERB has exclusive initial jurisdiction when (1) the grievance may be said to constitute unfair practices; (2) the PERB can grant relief equivalent to that available in court; and (3) the Legislature intended the PERB to exercise its jurisdiction in this instance. ( *Id.*, at p. 7.)

(1b) The issues plaintiffs raise are identical to those addressed in *Leek v. Washington Unified School Dist.* (1981) [124 Cal.App.3d 43 \[177 Cal.Rptr. 196\]](#). There, plaintiffs, nonunion members of defendant Washington Education Association (WEA), sued the school district and WEA claiming that: (1) the mandatory service fee provision in their collective bargaining agreement violated several provisions of the Educational Employment Relations Act; (2) the use of the fee for unconsented political activities violated their constitutional rights; and (3) the exclusive jurisdiction conferred on the PERB by [section 3541.5](#) to identify and redress unfair practices did not encompass the constitutional grievances alleged in their complaint. [Section 3541.5](#) provides, inter alia, that "[t]he initial determination as to whether the charges of unfair practices are justified, and, if so, what remedy is necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board."

Plaintiffs argued that [sections 3543.5 and 3543.6](#) defined what acts constituted unfair practices and that none of the acts alleged in the complaint fell within those categories. ( *Leek v. Washington Unified School Dist.*, supra., [124 Cal.App.3d at p. 48.](#)) The *Leek* court correctly rejected those contentions and concluded that the PERB is not limited to investigating charges defined as "unlawful" under [sections 3543.5 and 3543.6](#). Relying on section 3541.3, \*769 subdivision (i) the court concluded that the PERB has the power to not only investigate unfair practices but also to investigate "... alleged violations of this chapter, and to take such action and make such determinations in respect of such charges or alleged violations as the board deems necessary to effectuate the policies of this chapter." ( *Leek v. Washington Unified School Dist.*, supra., [124 Cal.App.3d at pp. 48-49](#); italics in original.)

Looking beyond the constitutional label given to plaintiffs' grievances herein (see [Aboud v. Detroit Board of Education \(1977\) 431 U.S. 209 \[52 L.Ed.2d 261, 97 S.Ct. 1782\]](#)), the substance of conduct complained of may also constitute unfair practices which arguably could be resolved by a PERB ruling. By investing the PERB with broad investigative and remedial powers, the Legislature intended that the PERB exercise initial jurisdiction over those nominal constitutional violations. PERB might validly devise a method to allow plaintiffs to avoid payment for those political and ideological activities they find constitutionally objectionable

without restricting the unions' ability to require plaintiffs to contribute to the collective bargaining and grievance activities. Referring this dispute to PERB first would promote the Legislature's purpose in creating an expert administrative body whose responsibility it is to develop and apply a comprehensive, consistent scheme regulating public employer-employee relations. ([Gov. Code, § 3540](#); Fresno Unified School Dist. v. National Education Assn. (1981) [125 Cal.App.3d 259, 272](#) [[177 Cal.Rptr. 888](#)].)

Plaintiffs contend that the PERB remedy is unsatisfactory or otherwise unworkable. We decline to speculate whether further judicial relief will be necessary or to what extent. Where, as here, an administrative remedy has been created, it must be exhausted despite plaintiffs' predictions. (See Security-First Nat. Bk. v. County of L.A. (1950) [35 Cal.2d 319, 321](#) [[217 P.2d 946](#)]; Leek v. Washington Unified School Dist., supra., [124 Cal.App.3d at p. 53](#).)

The judgment is affirmed.

King, J., and Haning, J., concurred. \*770  
Cal.App.1.Dist.,1983.

Link v. Antioch Unified School Dist.  
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