

CLARIFIED by National Union of Healthcare
Workers (2012) PERB Decision No. 2249-M



STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

FRANKLIN DELANO RAGSDALE,)	
)	
Charging Party,)	Case No. LA-CO-587
)	
v.)	PERB Decision No. 944
)	
UNITED TEACHERS-LOS ANGELES)	June 23, 1992
)	
Respondent.)	

Appearance: Franklin Delano Ragsdale, on his own behalf.
Before Camilli, Caffrey, and Carlyle, Members.

DECISION AND ORDER

CARLYLE, Member: This case is before the Public Employment Relations Board (Board) on appeal by Franklin Delano Ragsdale of a Board agent's dismissal (attached hereto) of his charge alleging that the United Teachers-Los Angeles violated section 3543.6(b) of the Educational Employment Relations Act (EERA)¹ by failing to represent him in his grievance against the Los Angeles Unified School District.

¹EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3543.6 states, in pertinent part:

It shall be unlawful for an employee organization to:

(b) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

The Board has reviewed the Board agent's warning and dismissal letters, and finding them to be free of prejudicial error, adopts them as the decision of the Board itself.

The unfair practice charge in Case No. LA-CO-587 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Camilli and Caffrey joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
3530 Wilshire Boulevard, Suite 650
Los Angeles, CA 90010-2334
(213) 736-3127



March 31, 1992

Franklin D. Ragsdale

Re: DISMISSAL OF CHARGE AND REFUSAL TO ISSUE COMPLAINT
Unfair Practice Charge No. LA-CO-587
Franklin Delano Ragsdale v. United Teachers - Los Angeles

Dear Mr. Ragsdale:

In the above-referenced charge, you allege that United Teachers - Los Angeles (UTLA or union) failed as an exclusive representative to fairly represent you in dealing with the Los Angeles Unified School District (District) in alleged violation of Government Code section 3543.6(b) of the EERA.

I indicated to you in my attached letter dated March 20, 1992 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 that would correct the deficiencies explained in that letter, you should amend the charge accordingly. You were further advised that unless you amended the charge to state a prima facie case, or withdrew it prior to March 27, 1992, the charge would be dismissed.

You advised me on March 27, 1992, that you are not filing an amended charge, but may subsequently appeal my dismissal. Therefore, as I have not received either a request for withdrawal or an amended charge, I am dismissing the charge based on the facts and reasons contained in my March 20, 1992 letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, 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 (California Code of Regs., tit. 8, sec. 32635(a)). To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing (California Code of Regs., tit. 8, sec. 32135). Code of Civil Procedure section 1013 shall apply. The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

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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 calendar days following the date of service of the appeal (California Code of Regs., tit. 8, sec. 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 California Code of Regs., tit. 8, sec. 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.

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 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 (California Code of Regs., tit. 8, sec. 32132).

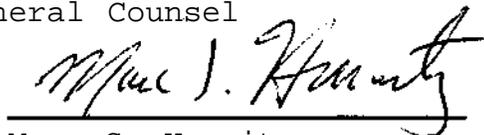
Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

JOHN W. SPITTLER
General Counsel

By



Marc S. Hurwitz
Regional Attorney

Attachment

cc: Roger Segure, Director of Grievance Processing, UTLA
Jesus E. Quinonez, Esq., Taylor, Roth, Bush & Geffner

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Boulevard, Suite 650
Los Angeles, CA 90010-2334
(213) 736-3127



March 20, 1992

Franklin D. Ragsdale

Re: WARNING LETTER, Unfair Practice Charge
No. LA-CO-587, Franklin Delano Ragsdale v.
United Teachers - Los Angeles

Dear Mr. Ragsdale: _____

In the above-referenced charge, you allege that United Teachers - Los Angeles (UTLA or union) failed as an exclusive representative to fairly represent you in dealing with the Los Angeles Unified School District (District) in alleged violation of Government Code section 3543.6(b) of the EERA.

More specifically, you allege that UTLA failed to fairly represent you in your grievance¹ against the District. You contend that there are no contractual bases for the imposition of discipline (I assume you mean your dismissal in December 1990) against employees in contravention of the Collective Bargaining Agreement (Agreement). You cite Article V, section 22.0 (no reprisals), Article X, section 1.0 (evaluation and discipline - purpose), Article XIX, sections 5.6b. and 5.7 (standby lists for substitute employees), and Appendix F, paragraphs 1 and 3 (special settlement provisions re May 1989 strike).

My investigation and the charge reveals the following facts. You were a provisional teacher and a substitute for the District for approximately ten years. You have been a member of UTLA for approximately eight years. At all times relevant to your charge, you were an Incentive Substitute Teacher for the District. An Inadequate Service Report (ISR) was issued to you on or about October 24, 1988. On or about October 28, 1988, the District issued a warning letter to you. The District issued an ISR (encounter on a picket line) to you on or about May 30, 1989 and a grievance was filed. On or about June 16, 1989, the District issued you a warning letter. On or about September 10, 1990,

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¹It is unclear which grievance you are referring to, but it is likely you mean your grievance protesting your dismissal in December 1990.

²It appears that Ron Apperson, Legal Adviser for the District, advised you by letter dated September 11, 1991 that

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you grieved over the District's not having used you as a substitute during the summer. Thereafter, UTLA refused to proceed to binding arbitration. The District issued you a third ISR on or about October 12, 1990 (for allegedly calling a parent a derogatory name). A grievance was filed.³ By letter dated December 3, 1990, the District dismissed you from substitute status effective December 3, 1990. On or about December 6, 1990, you filed a grievance protesting the discharge and requesting reinstatement. On or about December 13, 1990, the grievance was denied by the District. On or about January 25, 1991, UTLA indicated to you that it would not represent you, or that it would not take your grievance to binding arbitration. On or about April 10, 1991 the UTLA Grievance Review Committee denied your request to take your grievance to binding arbitration.

On June 10, 1991, you filed a lawsuit against the District, UTLA and others in U.S. District Court for the Central District of California, Case No. 91-3119, for wrongful termination/civil rights, breach of statute, breach of labor agreement and the duty of fair representation (DFR).⁴ On August 23, 1991, you wrote to the District Board of Education asking that you be returned to service. See footnote 2 for a response dated September 11, 1991, by the District's Legal Adviser, Ron Apperson. On September 20, 1991, you wrote to the District Board of Education, among others, and requested your dismissal be rescinded. On September 20, 1991, you wrote to UTLA indicating that two ISR's had been defeated and they should "come to the aid of the substitute membership." On October 4, 1991, Jesus Quinonez, Esq. for UTLA, wrote to you and indicated, in part, that based on California Education Code 44953, the District may dismiss substitute employees at the "pleasure of the board." Therefore he believed UTLA would be unsuccessful were it to attempt to challenge the dismissal. Jesus indicated that this was UTLA'S response to your

pursuant to Appendix F, page 251 of the Collective Bargaining Agreement between UTLA and the District, effective June 26, 1989 through June 30, 1991, the ISR dated May 30, 1989 should not be considered in your employment, thus removing it from consideration. At the same time, he indicated that as you do not hold tenure, there was enough information in your file to permit the District not to hire you as a substitute employee.

³By letter dated March 21, 1991, regarding this grievance, the District decided not to proceed to arbitration, and that it was rescinding/destroying the October 12, 1990 ISR.

⁴In or about July 1991, the lawsuit was dismissed as to all defendants.

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request for reconsideration. You allege that this is the latest instance of UTLA's failure to fairly represent you.

On March 17, 1992, I asked you what facts took place that lead you to say that the Quinonez letter dated October 4, 1991, was written with an unlawful motive or was written arbitrarily, discriminatorily, or in bad faith. Your response included the following information. First, you contend UTLA acted arbitrarily and in bad faith as you're being disciplined in this case was inappropriate, and the union was doing nothing about it or was not living up to the contract. Second, during the strike in 1989, you went to work and crossed the picket line at Crenshaw High School. Jeff Horton, a UTLA striker, now on the LAUSD School Board, threatened you then by saying "We'll get you. You'll never work here at Crenshaw again." Vicki Roach, a UTLA striker, claimed that you assaulted her or touched her with your hands. Also, you were criticized at a UTLA rally on or about May 20, 1989. In September 1991, the District indicated the May 1989 ISR should not be used, but would still not rehire/hire you as a substitute employee (see footnote 2). Thus, you contend this indicates the October 1991 Quinonez letter was arbitrary/had a bad motive. Third, you contend that UTLA's refusals to go to binding arbitration in the above grievances were capricious and done in bad faith. The union allowed your dismissal to stand. Fourth, you contend that you're being a black male earning about \$175 a day as an incentive substitute played a role in the Quinonez October 1991 letter. You believe you were treated in a disparate manner by UTLA as historically, black people were excluded from good jobs. You then referred to race and economics. You were high on the "sub list," being number one, being called first based on your language skill, time and grade. Therefore, by your being dismissed by the District, this allowed another person a preference, namely a non-black, younger female.

On March 18, 1992 you called me to provide additional information. First, you contend that since you sued the union, Mr. Quinonez acted with malice on October 4, 1991 in finding no basis to challenge your 1990 dismissal as a substitute teacher. Second, you contend you were displaced without cause and UTLA is permitting this to happen and acting in bad faith. You believe that your September 20, 1991 letter to Mr. Quinonez asked the union to proceed on your behalf and also asked again that your grievance challenging your dismissal as a substitute teacher be

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taken to binding arbitration.⁵ I indicated in part that I would be sending you this warning letter.

The allegations in your charge do not state a prima facie case for several reasons. First, EERA does not allow a complaint to issue regarding a charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge. It is the charging party's burden, as part of the prima facie case to prove the charge was timely filed. Furthermore, there is no longer any equitable tolling of the six month limitations period. The Regents of the University of California (1990) PERB Decision No. 826-H. This charge was filed on February 25, 1992. Therefore, we may only consider alleged unlawful conduct of the union occurring after on or about August 25, 1991. Thus all allegations of unlawful conduct prior to this date are untimely, and will be dismissed.⁶ Although the Quinonez letter to you dated October 4, 1991 is within the six month statutory period, it too is arguably time barred. In a case involving the duty of fair representation, a claim accrues on the date when the employee, in the exercise of reasonable diligence, knew, or should have known that further assistance from the union was unlikely. See International Union of Operating Engineers. Local 501 (Reich) (1986) PERB Decision No. 591-H. You knew in or about April 1991 that UTLA would not take your grievance to binding arbitration, and that it determined that there was no statutory or contractual basis upon which to challenge your 1990 dismissal as a substitute. Thus, you had until on or about October 10, 1991 to file a charge based upon the union's conduct.⁷

⁵Although your September 20, 1991 letter arguably did request his aid, and that he advise UTLA of the progress you had made, it did not specifically ask that your grievance be taken to binding arbitration.

⁶This includes, in part, any acts or omissions by UTLA in refusing to take the grievance (over your discharge) to binding arbitration on April 10, 1991. As you have provided no date for UTLA's refusing to take your September 10, 1990 grievance (not being used for summer school) to binding arbitration, we must assume it is outside the six month statutory period.

⁷See Compton Community College District (1991) PERB Decision No. 915 at pages 4-6 for the law on "continuing violations." "Generally, a violation is a continuing one if the violation has been revived by subsequent unlawful conduct within the six-month statute of limitations." (citations omitted) Here, you were arguably requesting reconsideration of a union decision not to go to binding arbitration initially made by the union in January and

Second, assuming your allegations are timely, there is no evidence indicating violations of the union's duty of fair representation (DFR). The following information describes what is needed to allege a prima facie case involving the DFR guaranteed under EERA. The duty of fair representation imposed on the exclusive representative extends to negotiating and grievance handling. Fremont Teachers Association (King) (1980) PERB Decision No. 125; United Teachers of Los Angeles (Collins) (1983) PERB Decision No. 258. In order to state a prima facie violation of this section of the EERA, Charging Party must show that the Association's conduct was arbitrary, discriminatory, or in bad faith. In United Teachers of Los Angeles (Collins), Id., the Public Employment Relations Board (PERB) 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.

.

A union may exercise its discretion to determine how far to pursue a grievance on 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. Reed District Teachers Association. CTA/NEA (Reyes) (1983) PERB Decision No. 332, citing Rocklin Teachers

April 1991. See Oakland Education Association, CTA/NEA (Mingo) (1984) PERB Decision No. 447 where subsequent requests that the union file grievances, and the union's refusal to file a grievance, did not constitute a continuing violation.

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Professional Association (Romero) (1980) PERB
Decision No. 124.

As I indicated to you on March 18, 1992, the present charge fails to state a prima facie case as it does not allege facts or show that the union's conduct on October 4, 1991 was arbitrary, discriminatory or in bad faith. As seen above, mere negligence or poor judgment does not constitute a breach of the union's duty. Pleading or raising a bare allegation without sufficient supporting facts is insufficient for purposes of alleging a prima facie case. California State University (Pomona) (1988) PERB Decision No. 710-H. Furthermore, PERB regulation 32615 (California Code of Regulations, title 8, section 32615) requires that a charge contain "a clear and concise statement of the facts and conduct alleged to constitute an unfair practice." (emphasis added.) The Charging Party must allege with specificity who, what, when, where and how the union's activities were arbitrary, discriminatory, or in bad faith. Mere speculation, conjecture or legal conclusions are insufficient.

You view your dismissal as the imposition of discipline in contravention of the Collective Bargaining Agreement. Thus, you believe that the union should have proceeded in challenging your dismissal/going to binding arbitration. The Agreement states at Article V, section 11.0, Request for Arbitration:

If the grievance is not settled in Step Two, UTLA, with the concurrence of the grievant, may submit the matter to arbitration by a written notice to the District's office of Staff Relations within five (5) days after termination of Step Two (emphasis added).

The Agreement appears to allow the union the discretion to submit matters to arbitration with the concurrence of the grievant. It does not say that the union must submit the matter to arbitration. Your assertion above is insufficient to show that the union's determination by Mr. Quinonez on October 4, 1991 was arbitrary, discriminatory or in bad faith. Next, the negative comments or threats made to you in 1989, after you crossed the picket line, do not support a finding that union conduct on October 4, 1991 was without a rational basis, devoid of honest judgment, discriminatory, or in bad faith. Likewise, your general allegations of disparate treatment due to sexual, age, race or economic discrimination do not show that Mr. Quinonez, for UTLA, acted on October 4, 1991 with an unlawful motive or without any rational basis. Also, there are insufficient facts to show that Mr. Quinonez acted with malice due to your lawsuit against the union. Therefore, there are no allegations

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indicating that in determining it could not successfully challenge your dismissal, that UTLA 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 any additional facts that would correct the deficiencies explained above, please amend the charge accordingly. 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 must be signed under penalty of perjury by the charging party. The amended charge must be served on the respondent⁸ and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before March 27, 1992, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3127.

Sincerely,

Marc S. Hurwitz
Regional Attorney

⁸Roger Segure, Director of Grievance Processing, United Teachers-Los Angeles, 2511 W. Third Street, Los Angeles, Ca. 90057