

**STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD**



BRIAN CROWELL,

Charging Party,

v.

BERKELEY FEDERATION OF TEACHERS,  
LOCAL 1078,

Respondent.

Case No. SF-CO-826-E

PERB Decision No. 2695

February 5, 2020

Appearances: Brian Crowell, on his own behalf; Weinberg Roger & Rosenfeld by Stewart Weinberg, Attorney, for Berkeley Federation of Teachers, Local 1078.

Before Banks, Shiners, and Krantz, Members.

DECISION<sup>1</sup>

KRANTZ, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal from a dismissal issued by PERB's Office of the General Counsel (OGC). Brian Crowell (Crowell), a teacher at Berkeley Unified School District (District), filed the underlying charge against the union that exclusively represents District teachers, Berkeley Federation of Teachers, Local 1078 (Local 1078).

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<sup>1</sup> PERB Regulation 32320, subdivision (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 [Review of Dismissals] shall determine whether the decision or order, or any part thereof, shall be designated as precedential." The Board has not designated the decision herein as precedential because it meets none of the criteria enumerated in the regulation. (PERB Regulations are codified at Cal. Code Regs., tit. 8, § 31001 et seq.)

Crowell's charge, as amended, alleges that in the course of settling a grievance regarding class sizes, Local 1078 breached its duty of fair representation under the Educational Employment Relations Act (EERA).<sup>2</sup>

Crowell asserts that Local 1078 settled the class size grievance without allowing bargaining unit members to vote on the settlement, which he claims is required by a contractual provision providing for employees to vote on proposed contract modifications or waivers. OGC dismissed the amended charge because it failed to allege conduct by Local 1078 that was arbitrary, discriminatory, or in bad faith as to Crowell. Having reviewed the entire case file and considered applicable precedent, we join OGC in finding Crowell did not allege sufficient facts that, if proven, would establish a prima facie case. Even if the charge allegations were sufficient to show Crowell had standing to file the charge, they do not establish that Local 1078 engaged in arbitrary, discriminatory, or bad faith conduct. We therefore affirm the dismissal of the amended unfair practice charge.

#### ORDER

The amended unfair practice charge in Case No. SF-CO-826-E is DISMISSED WITHOUT LEAVE TO AMEND.

Members Banks and Shiners joined in this Decision.

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<sup>2</sup> EERA is codified at Government Code section 3540 et. seq.