STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SANDRA FAETH AND JUDY MCCARTY, Charging Parties, v. REDLANDS TEACHERS ASSOCIATION, Respondent.	)	Case No. LA-CO-41 PERB Decision No. 72 September 25, 1978

Appearances: Thomas C. Agin, Director of California Pupil Services Labor Relations for Sandra Faeth and Judy McCarty; Edward B. Hogenson, Executive Director for Redlands Teachers Association.

Before Gluck, Chairperson; Gonzales and Cossack Twohey, Members.

DECISION

This case is before the Public Employment Relations Board (hereafter Board) on an appeal by the charging parties to the attached hearing officer's dismissal of their unfair practice charge. The charging parties alleged that the Redlands Teachers Association (hereafter Association) failed to represent them fairly, thereby violating sections 3544.9 and 3543.6(b) of the Educational Employment Relations Act.[1] The

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1/The Educational Employment Relations Act is codified at Government Code section 3540 et seq.

Section 3544.9 provides:

> The employee organization recognized or certified as the exclusive representative for the purpose of meeting and negotiating shall fairly represent each and every employee in the appropriate unit.

hearing officer found that the facts alleged by the charging parties did not show a prima facie violation of the Association's duty of fair representation. He dismissed the charge, offering the parties the opportunity to amend the charge or to appeal the dismissal to the Board itself. The parties chose to file this appeal.

The Board has considered the charge and the dismissal in light of the arguments on appeal. For the purpose of considering the appeal of a dismissal for the failure to allege a violation of the EERA, the Board assumes that the facts alleged in the charge are true.2/ It affirms the hearing officer's discussion3/ and conclusion that the unfair practice charge should be dismissed.

Section 3543.6(b) provides:

> 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.

2San Juan Unified School District (3/10/77) EERB Decision No. 12.

3/Member Gonzales wishes to note that Ford Motor Co. v. Huffman (1953) 345 U.S. 330 [31 LRRM 2548], quoted by the hearing officer in his proposed decision, involved only the duty of employee organization negotiators to their unit and in his opinion is not necessarily applicable to the responsibilities of district negotiators.

ORDER

Upon the foregoing Decision and the entire record in this case, the Public Employment Relations Board ORDERS that:

The unfair practice charge filed by Sandra Faeth and Judy McCarty against Redlands Teachers Association is dismissed without leave to amend.

By Raymond J. Gonzales, Member

Harry Gluck, Chairperson

Jerilou Cossack Twohey, Member

PUBLIC EMPLOYMENT RELATIONS BOARD

OF THE STATE OF CALIFORNIA

FAETH AND MC CARTY, Charging Party, v. REDLANDS TEACHERS ASSOCIATION, Respondent.	Case No. LA-CO-41 DISMISSAL WITH LEAVE TO AMEND

Notice is hereby given that the above-captioned unfair practice charge is dismissed with leave to amend. Any amendment shall be filed within twenty (20) calendar days after service of this Notice, The dismissal is based on the following grounds:

Charging parties, Sandra Faeth and Judy McCarty, have alleged that respondent, Redlands Teachers Association (Association), has violated Government Code section 3543.6(b)[1]/ by breaching its duty of fair representation in its handling of negotiations with the Redlands Unified School District.

As outlined in the charge, the facts in this matter are as follows:

> In February 1977 the two charging parties approached both the District and the RTA concerning a discrepancy in the psychologist salary schedule which caused the two charging parties to be paid at a rate significantly less (based on relative experience) than the other psychologists employed by the school system. The District referred the charging parties to the RTA and stated that any change would have to be made through future negotiations between the RTA (the exclusive representative) and the District.

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[1]Gov. Code. sec. 3543.6(b) provides:

> It shall be unlawful for an employee organization to:
>
> > 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.

In April and May of 1977 the two charging parties submitted a negotiations proposal to the RTA. This proposal would place all psychol salary scale by moving the charging parties to the same experience compensation formula as the other psychologists.

The proposal was accepted by unanimous vote of the RTA Representative Council.

During the sunnier of 1977 the charging parties approached RTA to permit them or a mutually agreeable pupil personnel services employee to monitor the negotiating process. The efforts met with no success. In October 1977 the charging parties were told that no information would be given until all negotiations were completed.

In October of 1977 the negotiation process was apparently completed and a meeting of RTA was held to ratify the, contract. The contract included an agreement which would rectify the discrepancy in the psychologists salary scale to a small degree but would still leave the pay of the two charging parties significantly behind the others.

At the ratification meeting Mike Karpman, a representative of the psychologists, expressed the dissatisfaction of the psychologists, especially the two charging parties, with both the process and outcome of these negotiations. The contract was ratified over these objections.

RTA did not invoke the impasse and factfinding provisions of the Educational Employment Relations Act during the negotiations leading to this contract.

Subsequent to the signing of the contract the charging parties approached the RTA on several occasions (both directly and through Mike Karpman) to discuss their concern with the outcome of negotiations and to attempt to find a remedy either present or future for the continuing discrimination in salary. The general response from RTA has been that the interests of these two individuals had been more than adequately represented and that no further action was warranted.

Although the National Labor Relations Act (NLRA)[2] does not explicitly declare the existence of a duty of fair representation, it has long been recognized that

[2]29 U.S.C, sec. 151 et seq.

the NLRA imposes upon enployee organizations a duty to act fairly toward the employees whom they represent. In Steele v. Louisville & N.R.R. (1944) 323 U.S. 192 [15 LRRM 708], the U.S. Supreme Court stated that the union's duty is to "exercise fairly the power conferred, upon it in behalf of all those for whom it acts, without hostile discrimination against them."[3] In Miranda Fuel Co., Inc. (1962) 140 NLRB 181 [51 LRRM1584], the National Labor Relations Board (NLRB) adopted the same standard that had been established judicially in Steele stating that:

> Section 7 thus gives employees the right to be free from unfair or irrelevant or invidious treatment by their exclusive bargaining agent in matters affecting their employment.[4]

Similar language is found in Vaca v. Sipes (1967) 386 U.S. 171 [64 LRRM 2369], where the Supreme Court noted that a "breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith."[5] [Emphasis added.]

At the same time, the duty imposed by the courts and the NLRB leaves a significant area of discretion to be exercised by the employee organization. In the Steele case, the Court recognized that the duty of fair representation "does not mean that the statutory representative of a craft is barred from making contracts which may have been unfavorable effects as some of the members of the craft represented."[6]

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[3]15 LRRM at 712. Accord, Wallace Corp. v. NLRB (1944) 323 U.S. 248 [15 LRRM 697, 701].

[4]140 NLRB at 185.

[5]64 LRRM at 2376.

[6]15 LRRM at 712.

Section 3544.9 of the Educational Employment Relations Act (EERA) provides that an exclusive representative "shall fairly represent each and every enployee in the appropriate unit."

The Public Employment Relations Board (PERB) had not yet interpreted this section. Even though there is no parallel language in the NLRA creating a duty of fair representation, federal precedent under the National Labor Relations Act (NLRA) offers significant guidance. The California Supreme Court in Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608, stated that where the NLRA does not contain specific wording comparable to the state act, if the rationale that generated the language "lies imbedded in the federal precedents under the NLRA" and "the federal decisions effectively reflect the same interests as those that prompted the inclusion of the [language in the EERA], [then] federal precedents provide reliable if analogous authority on the issue."[7]

The close similarity between section 3544.9 and the NLRB created duty of fair representation is no coincidence—it is readily apparent that the rationale that generated the EERA's duty of fair representation provision "lies imbedded in the federal precedents under the NLRA." Therefore, it is appropriate to consider federal precedent in determining whether charging parties have shown a prima facie violation of the duty of fair representation.

The specific allegations to be inferred from the charge are that the Association violated its duty to represent charging parties in good faith by: (1) refusing to allow a pupil personnel services employee to monitor negotiations; and (2) failing to achieve the specific benefits at the negotiating table that were proposed by the psychologists. Charging parties have indicated in their

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[7]12 Cal.3d at 616, 617. Cf., Lerma v. D'Arrigo Bros. Co. of Cal. (1978) 78 Cal.App. 3d 836 (Ct. of Appeal ruling that federal precedent [duty of fair representation] is applicable to the Agricultural Labor Relations Act).

The PERB has on many occasions taken cognizance of federal precedent in interpreting various provisions of the EERA where the provisions are similar to the language in the NLRA (e.g., Sweetwater Union High School (1976) EERB Decision No. 4),

unfair practice charge that their negotiations proposal was accepted by the Association; that the Association negotiated with the District over that proposal; and that the Association's efforts were at least partially successful. Nowhere in the charge is there an allegation (expressed or implied) that the Association discriminated against the charging parties or that the Association acted arbitrarily or in bad faith.

In the absence of specific allegations of arbitrary, discriminatory, or bad faith conduct, the Association's behavior, including its refusal to go to impasse over the psychologist pay proposal appears to be well within the discretion accorded the exclusive representative in negotiating a contract. As the Supreme Court noted in Ford Motor Co. v. Huffman (1953) 345 U.S. 330 [31 LRRM 2548]:

> Any authority to negotiate derives its principal strength from a delegation to the negotiators of a discretion to make such concessions and accept such advantages as, in the light of all relevant considerations, they believe will best serve the interests of the parties represented. A major responsibility of negotiators is to weigh the relative advantages and disadvantages of differing proposals .... Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.[8]

For the above reasons, the unfair practice charge filed by Sandra Faeth and Judy McCarty does not state a prima facie violation of the duty of fair representation. Consequently, the charge is dismissed with leave to amend within

[8]31 LRRM at 2551.

twenty (20) calendar days. Any amendment must designate the specific section and subsection of the EERA which are alleged to have been violated.

If the charging parties choose not to amend the charge, they may obtain review of the dismissal by filing an appeal to the Board itself within twenty (20) calendar days; after service of this Notice. Such appeal must be in writing, must be signed by tie charging parties, and must contain the facts and arguments upon which the appeal is based. Cal. Admin. Code tit. 8, section 35007(b).

A copy of any appeal filed with the Board itself must concurrently be served by the charging parties on the respondent, and the appeal filed with the Board must include a statement that service upon the respondent has been accomplished. Cal. Admin. Code tit. 8, section 35007(b) and (c).

Dated: May 24, 1978

WILLIAM P. SMITH
GENERAL COUNSEL

By _____
Bruce Barsook
Hearing Officer

PROOF OF SERVICE BY MAIL - C.C.P. 1013a

I declare that I am employed in the County of Sacramento, California. I am over the age of 18 years and not a party to the within entitled cause; my business address is 923 - 12th Street, Suite 201, Sacramento, CA 95814. On May 24, 1978, I served the NOTICE OF CANCELLATION OF HEARING AND NOTICE OF DISMISSAL WITH LEAVE TO AMEND) on the below listed parties by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the U.S. Mail at Sacramento, California addressed as follows:

Dr. Thomas C. Agin, Director
California Pupil Services Labor Relations
652 East Comnonwealth Ave.
Fullerton, Ca. 92631

Sandra Faeth & Judy McCarty
c/o Redlands Unified School District
P. 0. Box 1008
Redlands, Ca. 92373

Mr. Doug Wells, President
Redlands Teachers Association
336 Brookside Ave.
Redlands, Ca. 92373

Mr. Edward B. Hogenson
649 East Foothill
Rialto, Ca. 92376

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on May 24, 1978 at Sacramento, California.

Marie S. Macaulay

(Type or print name) (Signature)

CLH 1/78