STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

BEVERLY COLLINS,	)	
	)	
Charging Party,	)	Case No. LA-CO-179
	)	
v.	)	
	)	PERB Decision No. 258
UNITED TEACHERS OF LOS ANGELES,	)	
	)	
Respondent.	)	November 17, 1982
	)	

Appearance; Beverly Collins, in propria persona.

Before Tovar, Jaeger, and Jensen, Members.

DECISION

JAEGER, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by Beverly Collins to the attached dismissal of her unfair practice charge against the United Teachers of Los Angeles (UTLA). That charge alleged that UTLA breached its duty of fair representation, thereby violating sections 3544.9 and 3543.6(a), (b), (c) and (d) of the Educational Employment Relations Act (Act).[1] The

[1]The Educational Employment Relations Act is codified at Government Code section 3540 et seq. All references are to the Government Code unless otherwise specified.

Section 3544.9 provides:

> The employee organization recognized or certified as the exclusive representative

administrative law judge found that the facts alleged by the charging party did not constitute a prima facie violation of the Act and dismissed the charge with leave to amend.

The Board has considered the facts alleged in the unfair practice charge[2] and charging party's brief on appeal and affirms the administrative law judge's dismissal.

> for the purpose of meeting and negotiating shall fairly represent each and every employee in the appropriate unit.

Section 3543.6 provides:

> It shall be unlawful for an employee organization to:
>
> (a) Cause or attempt to cause a public school employer to violate Section 3543.5.
>
> (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.
>
> (c) Refuse or fail to meet and negotiate in good faith with a public school employer of any of the employees of which it is the exclusive representative.
>
> (d) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

[2]For purposes of considering whether an unfair practice charge states a prima facie violation of the Act, all the factual allegations of the charge are assumed to be true. San Juan Unified School District (3/10/77) PERB Decision No. 12,

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 Beverly Collins against the United Teachers of Los Angeles is DISMISSED with leave to amend.

Members Tovar and Jensen concurred.

STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

BEVERLY COLLINS, Charging Party, v. UNITED TEACHERS-LOS ANGELES, Respondent.	Case No. LA-CO-179 NOTICE OF REFUSAL TO ISSUE COMPLAINT AND DISMISSAL OF CHARGE WITH LEAVE TO AMEND

NOTICE IS HEREBY GIVEN that no complaint will be issued in the above-captioned unfair practice charge and that it is dismissed with leave to amend within twenty (20) calendar days after service of this Notice of Dismissal.

This action is taken on the ground that the charge fails to state a prima facie violation of the Educational Employment Relations Act {hereafter EERA).[1]

BACKGROUND

On June 23, 1981, charging party, Beverly Collins, filed an unfair practice charge against the United Teachers-Los Angeles (hereafter UTLA), alleging a violation of

[1]Government Code section 3540 et seq. All statutory references herein are to the EERA unless otherwise noted.

sections 3543.6(a), (b), (c), (d),[2] and section 3544.9.[3]

For purposes of considering whether the above-captioned unfair practice charge states a prima facie violation of the EERA, it will be assumed that all of the factual allegations of the charge are true. San Juan Unified School District **(3/10/77)** PERB Decision No. 12.

The factual allegations state as follows:

---

[2]**Section 3543.6** provides:

> It shall be unlawful for an employee organization to:
>
> (a) Cause or attempt to cause a public school employer to violate Section 3.543.5.
>
> (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.
>
> (c) Refuse or fail to meet and negotiate in good faith with a public school employer of any of the employees of which it is the exclusive representative.
>
> (d) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548) .

[3]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.

I am a teacher represented by UTLA. In Aug. of 1979 I filed a grievance against a principal of LA Unified School District. The grievance proceeded thru the first three steps. UTLA agreed to take it to arbitration in December of 1979. In order to get arbitrator Tom Roberts, UTLA waited until May of 1980 to begin the arbitration hearing.

The contract provides that the arbitrator be available for a hearing within sixty days. The contract provides that the arbitrator shall render his decision within 30 days after final submission of the case. UTLA did not insist on this time line but allows the arbitrator until June 1981 to decide.

I asked UTLA to have the former principal Mary Lou Lindsey present at the arbitration hearing so she could testify as to her previous conversations with me. UTLA refused to cause her to be present. Mrs. White was also asked to be present. This was refused.

This are the factsd upon which I claim UTLA (sic) its duty to fairly represent me.

DISCUSSION

Duty of Fair Representation

Section 3544.9 of the EERA provides that an exclusive representative "shall fairly represent each and every employee in the appropriate unit." The Public Employment Relations Board (hereafter PERB) has interpreted this section to mean that an exclusive representative clearly has a duty to represent all employees in the unit fairly in meeting and

negotiating, consulting on educational objectives, and administering the written agreement.[4]

The conventional statement of the duty of fair representation, enunciated by the United States Supreme Court,[5] has been recognized by the California Legislature by adopting section 3544.9. The close similarity between section 3544.9 and the NLRB created duty of fair representation is no coincidence, in that the rationale that generated the EERA's duty of fair representation provision "lies embedded in the federal precedents under the NLRA."[6] Therefore, it is appropriate to consider federal precedent in determining whether charging party has stated a prima facie violation of the duty of fair representation.[7]

---

[4]See Service Employees International Union, Local 99 (10/19/79) PERB Decision No. 106.

[5]In Steele v. Louisville and Nashville Railroad (1944) 323 U.S. 192 [15 LRRM 708], the Supreme Court decided that a union must represent all bargaining unit members "without hostile discrimination, fairly, impartially, and in good faith." 323 U.S. at 204. In Vaca v. Sipes (1967) 386 U.S. 171 [64 LRRM 2369], the court redefined the definition by stating 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." [Emphasis added.]

[6]See Redlands Teachers Association (9/25/78) PERB Decision No. 72.

[7]Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608 [87 LRRM 2453].

When a union engages in administration of a collective agreement, questions of fair representation arise over its processing of grievances. Whether a union has met its duty in this context depends not upon the merits of the grievance but rather upon the union's conduct in processing or failing to process the grievance. 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. See, e.g., Dill v. Greyhound Corp. (6th Cir. 1970) 435 F.2d 231, cert, denied (1971) 402 U.S. 952; Steinman v. Spector Freight Systems Inc. (2d Cir. 1973) 476 F.2d 437 [83 LRRM 228]; Service Employees International Union, Local 99 (10/19/79) PERB Decision No. 106.

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. See, e.g., Gleason v. T.I.M.E.-DC, Inc. (D. Colo. 1972) 84 LRRM 2107.

The specific allegations to be inferred from the charge are that UTLA violated its duty to represent charging party in good faith by: (1) waiting from August 1979 until May 1980 before starting the arbitration hearing, in order to get Arbitrator Tom Roberts, (2) not insisting on a speedy decision

and allowing the arbitrator until June 1981 to decide, and (3) refusing to call certain witnesses to testify at the arbitration hearing.

In the absence of specific allegations of arbitrary, discriminatory, or bad faith conduct, UTLA's behavior and actions appear to be well within the discretion accorded the exclusive representative in processing grievances. For the above reasons, the unfair practice charge filed by Beverly Collins does not state a prima facie violation of the duty of fair representation.

Section 3543.6(a), (b), (c) and (d)

Section 3544.9 is enforceable under section 3543.6(b) since breaches of the duty of fair representation violate that section. In Service Employees International Union, Local 99 (10/19/79) PERB Decision No. 106, the Board set forth the standard for finding a violation of section 3543.6fb), apply?.r.g the test in Carlsbad Unified School District (1/30/79) PERB Decision No. 89, to the protected rights of employees provided for in sections 3540[8] and

[8]Section 3540 recognizes:

> [T]he right of public school employees to join organizations of their own choice, to be represented by such organizations in their professional and employment relationships with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit . . . .

3543.[9] The EERA gives employees the right to join and participate in the activities of employee organizations" (sec. 3540) and employee organizations are prevented from interfering with employees because of the exercise of their rights (sec. 3543.6(b)).

An assertion of a prima facie violation of section 3543.6(b) must allege conduct of an employee organization that "tends to or does result in some harm to employee rights under EERA." Service Employees International Union, Local 99 (supra, p. 13) citing Carlsbad Unified School District (supra, at p. 10). Some connection must be shown between the employee organization's conduct and the employee's rights under EERA.

In the present charge the allegations lack any reference to Ms. Collins' exercise of a protected right and/or the threat or imposition by UTLA of reprisals, discrimination, interference, restraint or coercion against her for the exercise of such rights. There is no claimed connection between the charging party's exercise of rights and the UTLA's conduct about which Ms. Collins complains. In addition, charging party has failed to assert even a colorable claim of

---

[9]Section 3543 states:

> Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. . . .

a UTLA breach of the duty of fair representation as that duty was interpreted by the Board in Service Employees International Union, Local 99 (supra, p. 8). Furthermore, charging party has failed to assert how UTLA has violated the other sections of 3543.6 that the charging party alleged in her complaint (i.e., sections 3543.6(a), (c) and (d)).

Under PERB regulations a Board agent must dismiss the charge if it is determined that the charge is insufficient to establish a prima facie case. (PERB Regulation 32620(b)(4).)

For the above-stated reasons it is concluded that this unfair practice charge fails to state a prima facie violation of Government Code sections 3544.9 and 3543.6(a), ( ), (c), and (d) and, therefore, the charge must be dismissed with leave to amend.

This dismissal with leave to amend is made pursuant to PERB Regulation 32630(a). If the charging party chooses to amend, the amended charge must be filed with the Los Angeles Regional Office of the PERB within twenty (20) calendar days. (PERB Regulation 32630(b).) Such amendment must be actually received at the Los Angeles Regional Office of the PERB before the close of business (5:00 p.m.) on July 27, 1981 in order to be timely filed. (PERB Regulation 32135.)

If the charging party chooses not to amend the charge, she may obtain review of the dismissal by filing an appeal to the Board itself within twenty (20) calendar days after service of

this Notice of Dismissal. (PERB Regulation 32630(b).) Such appeal must be actually received by the Executive Assistant to the Board before the close of business (5:00 p.m.) on July 27, 1981 in order to be timely filed. (PERB Regulation 32135.) Such appeal must be in writing, must be signed by the charging party or its agent, and must contain the facts and arguments upon which the appeal is based. (PERB Regulation 32630(b).) The appeal must be accompanied by proof of service upon all parties. (PERB Regulations 32135, 32142 and 32630 (b).)

Dated: July 7, 1981

WILLIAM P. SMITH
Chief Administrative Law Judge

By
W. Jean Thomas
Hearing Officer