STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

GUST SIAMIS, Charging Party, v. LOS ANGELES UNIFIED SCHOOL DISTRICT, Respondent.	)	Case Nos. LA-CE-1163 LA-CE-1234 PERB Decision No. 311 May 20, 1983
GUST SIAMIS, Charging Party, v. UNITED TEACHERS OF LOS ANGELES, Respondent.	)	Case Nos. LA-CO-134 LA-CO-143

Appearances: Gust Siamis, in his own behalf; Joel M. Grossman, Attorney (O'Melveny & Myers) for Los Angeles Unified School District; and Richard J. Schwab, Attorney (Law Office of Lawrence B. Trygstad) for United Teachers of Los Angeles.

Before Tovar, Jaeger and Morgenstern, Members.

DECISION

TOVAR, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by Gust Siamis to the attached proposed decision of a hearing officer which dismisses all four of the consolidated charges which comprise this case. The charges against the Los Angeles Unified School District allege that it discriminated against

Mr. Siamis in violation of subsection 3543.5(a) of the Educational Employment Relations Act (EERA or Act)[1] when it issued him a Notice of Unsatisfactory Service (Notice). The charges against the United Teachers of Los Angeles (UTLA) allege that it failed to fairly represent Mr. Siamis in grieving the Notice, in violation of subsection 3543.6(b).[2]

The exceptions filed by Mr. Siamis claim no error of substantive law or fact on the part of the hearing officer, but instead are limited to procedural issues. With one exception, we find that the arguments presented by Mr. Siamis fail to identify any error by the hearing officer in his procedural

---

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

Section 3543.5 provides in pertinent part:

It shall be unlawful for a public school employer to:

> (a) 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.

[2]Section 3543.6 provides 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.

rulings. We therefore affirm the hearing officer's rulings made in connection with his disposition of the charges in Case Nos. LA-CE-1234, LA-CO-134 and LA-CO-143, and on that basis summarily affirm the dismissal of those charges, adopting the hearing officer's findings of fact and conclusions of law as those of the Board itself. For the reasons which follow, however, we find that the hearing officer erred in dismissing Case No. LA-CE-1163. We therefore reverse that dismissal and remand the case to the General Counsel for further proceedings.

DISCUSSION

The hearing officer based his dismissal of Case No. LA-CE-1163 upon his determination that the charge had been filed with PERB after the running of the six-month statute of limitations set forth at subsection 3541.5(a) of the EERA,[3] and was therefore time-barred.

---

[3]Subsection 3541.5(a) provides in pertinent part:

> (a) Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not do either of the following: (1) issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge; (2) issue a complaint against conduct also prohibited by the provisions of the agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted, either by settlement or binding arbitration. . . .

According to the hearing officer's calculations, Siamis received the Notice on June 27, 1979, and the six-month statute of limitations began to run from that date. The statute was tolled by the filing of Siamis' grievance on July 31, one month and three days later. It resumed running upon his receipt of notice of the final conclusion of the grievance proceedings on January 3, 1980, and thus expired four months and 27 days later, on June 1, 1980. The filing of charge number LA-CE-1163 on June 18, therefore, was found to be untimely.

Mr. Siamis argues, and we agree, that the hearing officer erred in holding that the statute began to run on the date he received the Notice.[4]

The hearing officer correctly noted that under subsection 3541.5(a) the statute of limitations is tolled "during the time it took the charging party to exhaust the grievance machinery." He failed to consider, however, that efforts preparatory to the actual filing of a grievance, including such tasks as investigation, discovery, planning and preparation of documents, are an inherent and necessary part of a complainant's pursuit of his or her grievance. The hearing

---

[4]Mr. Siamis also excepts to the hearing officer's finding that the Notice was served on him on June 27, 1979. The record supports his contention that he in fact received the Notice on July 11, 1979. However, this error, by itself, would not be prejudicial, since, if we were to adopt the formula used by the hearing officer in determining the running of the statute, the correction of this fourteen-day error would still put the filing of the charge beyond the expiration of the statute.

officer's ruling that such preparatory efforts do not toll the statute of limitations fails to allow for this reality and is, therefore, in our view erroneous.

The record in the instant case reveals that Mr. Siamis promptly contacted his exclusive representative upon receiving the Notice. He met twice with UTLA's agent in charge of grievances, Roger Segura, and they reviewed in depth Mr. Siamis' view of the relevant facts. In an effort to develop a defense on Siamis' behalf, Segura then met with UTLA's representative at Siamis' school. Because Segura foresaw that witnesses would be necessary to substantiate Siamis' defense, he then made efforts to secure such witnesses. Segura also reviewed with Siamis UTLA's own policies with regard to the representation of unit members in grievance matters. Finally, Segura prepared the documentation which would constitute Siamis' written grievance. This was submitted to the District on July 31, 1979, within 15 working days from his receipt of the Notice on July 11, as was required by contractual grievance provision. Thus, from the time that Siamis received the Notice until he filed his grievance, he was engaged in efforts reasonably related to pursuit of the grievance machinery. The period of time which elapsed does not constitute unreasonable delay or indicate that Siamis was sitting idly on his rights.

Upon these facts we conclude that the statute of limitations began running for the first time only upon the conclusion of the contractual grievance machinery on January 3, 1980.[5]

In dicta, the Board has previously endorsed this interpretation of subsection 3541.5(a). Thus, in San Dieguito Union High School District (2/25/82) PERB Decision No. 194, an employee organization filed grievances in October and November, 1977, over alleged unilateral changes implemented by the district at the start of the school year. The Board ultimately found that the statute had indeed run. In discussing its calculations, however, the Board noted the charging party's pursuit of the grievance machinery, and explained that:

> The limitations period, as a consequence, would not run until after it became clear that the possibility of a remedy via [the grievance procedure] was foreclosed. Here, the route proved unsuccessful on June 22, 1978 when the District's school board refused to accept the [advisory] arbitrator's award. The Association, however, failed to file its unfair practice with the PERB within six months from that date. [Emphasis added.]

---

[5]We note that subsection 3541.5(a) provides that the statute of limitations is tolled only during "the time it took the charging party to exhaust the grievance machinery." Thus, if, during the time following the complained-of conduct, the charging party is not engaged in efforts reasonably aimed at pursuit of the grievance machinery but is instead sitting idly on his rights, the statute will not be tolled.

Consistently with the above rationale, we find that the charge filed in Case No. LA-CE-1163 was filed within the time period prescribed by subsection 3541.5(a).

ORDER

Upon review of the entire record in this case, the Board ORDERS that:

1. Case Nos. LA-CE-1234, LA-CO-134 and LA-CO-143 are hereby DISMISSED;

2. Case No. LA-CE-1163 is hereby remanded to the General Counsel for further proceedings consistent with this Decision.

Members Jaeger and Morgenstern joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD
OF THE STATE OF CALIFORNIA

GUST SIAMIS, Charging Party, v. LOS ANGELES UNIFIED SCHOOL DISTRICT, Respondent,	)	Unfair Practice Case Nos. LA-CE-1163 LA-CE-1234
GUST SIAMIS, Charging Party, v. UNITED TEACHERS OF LOS ANGELES, Respondent.	)	Case Nos. LA-CO-134 LA-CO-143 PROPOSED DECISION (3/3/82)

Appearances: Gust Siamis for Charging Party; O'Melveny & Myers, attorneys, by Joel Grossman and Richard N. Fisher for Los Angeles Unified School District; and Lawrence B. Trygstad, attorney, by Richard J. Schwab for United Teachers of Los Angeles.

Before: Stuart C. Wilson, Administrative Law Judge.

STATEMENT OF THE CASE

Gust Siamis (hereafter Siamis) is a teacher in the Los Angeles Unified School District (hereafter District). In two cases he has charged the District with having discriminated against him because of his exercise of rights protected under the Educational Employment Relations Act (hereafter EERA),

Government Code sections 3540 et seq.[1] In two cases he has charged United Teachers of Los Angeles (hereafter UTLA) with having breached its duty fairly to represent him.

The charges were filed between June 18, 1980 and October 17, 1980, answered between July 11, 1980 and February 20, 1981, and heard June 15, 16 and 17, 1981.

FINDINGS OF FACT

Within the meaning of the EERA it is found that the District is an employer, and UTLA is an employee organization which is the exclusive representative of a collective negotiating unit of District teachers, including Siamis.

The first matter addressed at the hearing was the District's Motion to Dismiss charge LA-CE-1163 on the basis that it was time barred under section 3541.5(a)'s six-month limitation period.

Siamis filed this charge on June 18, 1980 because of his receipt from the District of a Notice of Unsatisfactory Service on June 27, 1979, 11 months and 21 days before.

The contract between the UTLA and the District contains grievance machinery which covers the situation and ends in binding arbitration. Thus the time Siamis took to exhaust the grievance machinery is tolled in computing the six-month limitation period.

---

[1]All references are to California Government Code unless otherwise noted.

Siamis initiated the grievance process July 31, 1979. It ended five months and three days later on January 3, 1980, when Siamis received final notice of denial.

Thus deducting the grievance time of five months and three days from the total time of 11 months and 21 days, leaves a difference of six months and 18 days.

Siamis argued that the one month and three day interval between his receipt of the Notice of Unsatisfactory Service and the filing of the grievance was merely an incubation period which did not count toward the six-month limitation period and thus that his charge was timely. Siamis' incubation period theory is not supported by the language of section 3541.5(a) which tolls the limitation period only "during the time it took the charging party to exhaust the grievance machinery."

In an overwhelming majority of its cases[2] the Public Employment Relations Board's (hereafter PERB) construction

---

[2]For example, see State of California Franchise Tax Board (5/13/81) PERB Order No. AD-109-S; Office the Santa Clara County Superintendent of Schools (9/17/80) PERB Order No. AD-98; Konocti Unified School District (7/16/79) PERB Order No. AD-71; Alameda Unified School District (7/6/79) PERB Order No. AD-70; San Rafael City Schools (7/6/79) PERB Order No. AD-68; Menlo Park City Elementary School District (5/25/79) PERB Order No. AD-65; Bassett Unified School District (3/23/79) PERB Order No. AD-63; Sacramento City Unified School District (1/29/79) PERB Order No. 55; State of California (1/2/79) PERB Order No. AD-52; Taft Union High School District (12/8/78) PERB Order No. AD-50; Pittsburg Unified School District (10/20/78) PERB Order No. AD-49; Anaheim Union High School District (7/17/78) PERB Order No. AD-42; Los Angeles Community College District (7/14/78) PERB Order AD-41; Redding Elementary School

of time-bar language has been very strict. This has been true even when the time-bar language has had provision for the making of exceptions which the subject language does not.

Based upon these factors it was concluded that the time running both before and after Siamis' resort to the grievance machinery must be counted, that the charge was time-barred and it was dismissed.

The next charge addressed was LA-CO-134 charging UTLA with having breached its duty fairly to represent Siamis in its handling of his problems arising from his Notice of Unsatisfactory Service.

Siamis presented evidence that he first contacted Roger Segura, UTLA's person in charge of grievances, to tell Segura he thought it was likely that he would receive a Notice ofUnsatisfactory Service. Segura replied that if Siamis received such a Notice he should bring it in so that the two of them could work on it.

Siamis did receive an 11 paragraph Notice of Unsatisfactory Service charging, among other things, repeated failures to follow prescribed procedures, use of abusive language to

---

District (6/21/78) PERB Order No. AD-39; Lincoln Unified School District (5/30/78) PERB Order No. AD-35; Monterey Peninsula Community College District (5/16/78) PERB Order No. AD-32; Anaheim Union High School District (3/16/78) PERB Order No. 27; Glendale Unified School District (2/1/78) PERB Order No. AD-25; Los Angeles Unified School District (11/8/77) EERB Order No. AD-19; Folsom Cordova Unified School District (7/7/77) EERB AD-15.

another teacher who was conducting a meeting, provocatively pushing another teacher, and attending a meeting during time he was assigned to supervise students.

Siamis took this Notice to Segura. Their first meeting lasted over an hour and they held another meeting later. Siamis told Segura that his reason for repeatedly failing to follow prescribed procedures, after having been requested to do so numerous times, was that he thought his way was better.

Regarding attending the meeting, Siamis told Segura that he had obtained another teacher to cover for him, although he had not received his principal's permission to do so as was required. Segura testified that based on what Siamis had told him, he saw no defense which could be raised to these charges. However, in an effort to find some extenuating circumstances Segura contacted UTLA's representative at Siamis' school. That representative told Segura that Siamis was the only teacher in trouble for this type of behavior.

Segura had been involved in the processing of grievances on behalf of UTLA and its predecessors since 1960. Because of this extensive experience processing grievances he testified that the charges regarding the use of insulting names and the pushing of another teacher would result in conflicting testimony at the grievance hearing. Therefore he foresaw the need to obtain witnesses who would testify favorably for Siamis. However, he was informed by the representative that

Siamis was not well-liked by the other teachers. Segura concluded from this that it would be difficult to obtain favorable witnesses.

As he does in all cases, Segura explained to Siamis that the standard conditions required by UTLA for it to carry the grievance were that Segura would be the person in charge who would run the case, make all decisions, and make contacts with the District. Siamis agreed to abide by these conditions and therefore Segura filed the grievance, even though he thought it had no chance of success.

A hearing date for step one was set but the principal assigned her designee to attend in her place because she was going to be on vacation. Siamis told Segura that he did not want to meet with the designee and insisted on meeting with the principal. Segura explained that it would then be necessary to postpone the hearing until the principal's return. Siamis said that he insisted on holding the hearing on the scheduled date and asked Segura to have UTLA obtain an injunction prohibiting the principal from taking a vacation. Segura said that he would not do so and with this Siamis went to other UTLA officials attempting without success to have them order Segura to attempt to get the injunction.

Siamis, without Segura's knowledge or consent, sent a letter to the District requesting that the grievance be

corrected in certain regards and also requesting discovery of various District documents.

Later Segura received a call from Barbara La Branche, district coordinator of staff relations and administrator of the grievance procedure. La Branche complained that Siamis was coming to her office at the District Headquarters talking about the grievance and that she had trouble getting rid of him. In their numerous dealings with grievances, she and Segura had agreed that they would be the contact persons for the respective sides, rather than the parties or witnesses. She asked Segura to keep Siamis from violating this agreement.

Considering all of the matters mentioned, these failures of Siamis to follow UTLA's standard conditions for carrying a grievance, Segura determined that Siamis had not and would not abide by those conditions, that Siamis intended to represent himself, and therefore that UTLA would withdraw from the grievance leaving Siamis to handle it himself. It is found that UTLA's withdrawal was based solely on Siamis' failure to follow UTLA's standard conditions. This withdrawal took place on the day before the hearing was to take place.

Siamis lost steps one, two and three and then requested Segura to have UTLA take the grievance to step four, binding arbitration. Segura testified that out of the approximately 200 grievances UTLA files per year, it takes only approximately 20 to binding arbitration. Segura testified that considering

Siamis' grievance had absolutely no chance of success and that Siamis would not abide by UTLA standard conditions, he declined to have UTLA take the matter to step 4. It is found that UTLA's refusal to go to arbitration was based solely upon Siamis' refusal to abide by the standard conditions and the lack of chance of success.

Siamis presented no evidence regarding Cases LA-CE-1234 or LA-CO-143.

Respondents presented no evidence.

ISSUES

1. Did Siamis carry his burden of proof in cases LA-CE-1234 and LA-CO-143?

2. Did UTLA breach its duty fairly to represent Siamis as charged in Case LA-CO-134?

CONCLUSIONS OF LAW

Case LA-CE-1163 was dismissed during the hearing because it was time-barred. Cases LA-CE-1234 and LA-CO-143 are now dismissed because Siamis presented no evidence thereon and thus failed to carry the burden of proof placed on the charging party. This leaves case LA-CO-134.

In Rocklin School District (3/26/80) PERB Decision No. 124, PERB held that a breach of the duty of fair representation occurs when an employee organization's conduct toward a member of a negotiating unit is arbitrary, discriminatory or in bad faith.

In Castro Valley Unified School District (12/17/80) PERB Decision No. 149, PERB held that an employee does not have an absolute right to have a grievance taken to arbitration and that an exclusive representative's reasonable refusal to proceed with arbitration is essential to the operation of a grievance and arbitration system.

It is concluded that it is reasonable and prudent for an employee organization representing teachers in a large District such as this one to have standard conditions for its participation in the grievance process which it applies to all unit members. Such conditions facilitate the orderly and efficient processing of the large number of grievances UTLA handles each year.

It is concluded that UTLA's standard conditions are reasonable and proper under the circumstances. There is no evidence that UTLA's insistence that Siamis abide by his agreement to observe these conditions, and refusal to participate if he refused, was arbitrary, discriminatory or in bad faith.

It was found that UTLA's withdrawal from the grievance process was based solely on Siamis' refusal to abide by these conditions and that its decision not to proceed to arbitration was based on the same factors plus the grievance's lack of chance of success.

Thus Siamis has totally failed to prove that UTLA's actions toward him were arbitrary, discriminatory or in bad faith. To the contrary, his own evidence proves that UTLA's actions were entirely reasonable under the circumstances.

Therefore, it is concluded that Siamis failed to meet his burden of proving that UTLA breached its duty fairly to represent him, and thus case LA-CO-134 must be dismissed.

PROPOSED ORDER

Based on the findings of fact, conclusions of law, and the entire record in this case, the charges against the Los Angeles Unified School District and United Teachers of Los Angeles are hereby DISMISSED.

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final on March 24, 1982 unless a party files a timely statement of exceptions and supporting brief within twenty (20) calendar days following the date of service of this decision. Said statement of exceptions and supporting brief must be actually received by the Executive Assistant to the Board at the Headquarters Office in Sacramento before the close of business (5:00 p.m.) on March 24, 1982, in order to be timely filed. See California Administrative Code, title 8, part III, section 32135. Any statement of exceptions and supporting brief must be served concurrently with its filing

upon each party to this proceeding. Proof of service shall be filed with the Board itself. See California Administrative Code, title 8, section 32305 (as amended).

DATED: March 4, 1982

Stuart C. Wilson
Administrative Law Judge