

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LINDA ALEXANDER, ET AL.,)	
)	
Charging Party,)	Case No. LA-CO-266
)	
v.)	PERB Decision No. 416
)	
FONTANA TEACHERS ASSOCIATION,)	October 16, 1984
CTA/NEA,)	
)	
Respondent.)	

Appearances; Glenn M. Taubman, Attorney (National Right to Work Legal Foundation, Inc.) for Linda Alexander, et al.

Before Tovar, Jaeger and Morgenstern, Members.

DECISION

JAEGER, Member: This case is before the Public Employment Relations Board on an appeal by the Charging Parties of the Regional Attorney's dismissal, attached hereto, of their charge alleging that the Fontana Teachers Association, CTA/NEA violated section 3543.6(b) of the Educational Employment Relations Act.

We have reviewed the Regional Attorney's dismissal and, finding it free from error, adopt it as the Decision of the Board itself.

ORDER

The unfair practice charge in Case No. LA-CO-266 is DISMISSED WITHOUT LEAVE TO AMEND.

Members Tovar and Morgenstern joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Headquarters Office
1031 18th Street
Sacramento, California 95814
(916) 322-3088



December 5, 1983

Jeffrey D. Wedekind

Re; Linda Alexander, et al. v. Fontana Teachers Association,
CTA/NEA; Charge No. LA-CO-266

Dear Mr. Wedekind:

By letter of November 15, 1983 (attached and incorporated by reference), I advised you that your charge against Fontana Teachers Association did not state a prima facie case, and that unless it was amended or withdrawn prior to Wednesday, November 30, 1983, it would be dismissed.

I have not received any communication from you and am therefore dismissing your charge for the reasons set forth in my letter of November 15, 1983.

Pursuant to Public Employment Relations Board regulation section 32635 (California Administrative Code, title 8, part III), you may appeal the refusal to issue a complaint (dismissal) to the Board itself.

Right to Appeal

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 (section 32635(a)). To be timely filed, the original and five (5) copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) on Monday, December 26, 1983, or sent by telegraph or certified United States mail postmarked not later than Monday, December 26, 1983 (section 32135). The Board's address is:

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

Mr. Wedekind
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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 (5) copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal (section 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 the document filed with the Board itself (see section 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 (3) 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 (section 32132).

Final Date

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

Very truly yours,

DENNIS M. SULLIVAN
General Counsel.

BY

Robert Kingsley
Attorney

PUBLIC EMPLOYMENT RELATIONS BOARD

Headquarters Office
1031 18th Street
Sacramento, California 95814
(916) 322-3088



November 15, 1983

Jeffrey D. Wedekind

Re: Linda Alexander, et al. v. Fontana Teachers Association,
CTA/NEA; Charge No. LA-CO-266

Dear Mr. Wedekind:

My preliminary determination regarding this matter is to refuse to issue a complaint and to dismiss the unfair practice charge because it fails to allege facts sufficient to state a prima facie violation of the Educational Employment Relations Act (EERA).¹ The reasoning which underlies this decision follows.

On May 31, 1983, Ms. Alexander and others filed with the Los Angeles Regional Office of PERB an unfair practice charge against the Fontana Teachers Association, CTA/NEA (hereafter Association) alleging violation of EERA section 3543.6(b). More specifically, they allege that the Association has discriminated against and otherwise interfered with, restrained and coerced charging parties in the exercise of their rights under the EERA by denying or threatening to deny to these employees the right:

- 1) to vote in contract ratification elections;
- 2) to receive notice of meetings at which proposed contract terms are presented and discussed among bargaining unit members;
- 3) to attend such meetings and to voice their opinions regarding the proposals; and
- 4) to receive notice of or access to any other method by which they might become informed and/or make their opinions known to the Association on such proposals.

¹References to the EERA are to Government Code sections 3540 et seq. PERB Regulations are codified at California Administrative Code, Title 8, part III, section 31000 et seq.

They further contend that these rights have been abridged solely because they have chosen not to join as members of the Association.

My investigation revealed that the right to vote on contract ratification is restricted to members of the Fontana Teachers Association. This is consistent with the following provisions of the Association By-Laws which, when read in concert, clearly indicate that such a limitation was intended.

ARTICLE 2 - MEMBERSHIP

2-2 General Requirements. To become a member, a membership enrollment form must be completed and filed, together with the prescribed amount of dues for the category of membership for which eligible or payroll deduction authorization. In addition, membership must also be obtained in the appropriate parallel category within the California Teachers Association and within the National Education Association whenever such memberships are available.

2-3 Active Membership. Active membership shall be open to any person who is engaged in or who is on limited leave of absence from professional educational work and whose primary assignment is such as not to hold supervisory responsibility over other certificated employees to such an extent as not to be represented in the negotiations process by the teacher bargaining unit.

ARTICLE - COMMITTEES

9-4b The Negotiating Committee shall present tentative agreement to the Executive Board, for approval. The Executive Board shall then hold a ratification election by the membership.

The Board itself has had occasion to address the duty of fair representation as it relates to internal union matters. Jules, Kimmett (10/19/79) PERB Decision No. 106. The Board's analysis recognizes that the Legislature, in conferring the right upon an exclusive representative to be the only employee organization empowered to represent unit members in their employment relations with the public school employer, also imposed the duty to exercise its power fairly on behalf of all of those for whom it acts. The duty of fair representation thus clearly extends to meeting and negotiating, consulting on educational objectives and administering the agreement. As to questions which do not involve the employer or which are strictly internal union matters, only those activities that have a substantial impact on the relationship of unit members to their employer are subject to the duty of fair representation. El Centro Elementary Teachers Association (8/11/82) PERB Decision No. 232 (summarily affirming the ALJ's conclusions of law; see ALJ decision, at p. 14.)

In El Centro, the Association revoked the right of nonmembers to vote on contract ratification. The Board observed that while the duty of fair representation implies some consideration of the views of various groups of employees and some access for communication of those views, there is no requirement that formal procedures be established. Thus, the Board held that the removal of formal procedures did not violate the duty of fair representation *in this case* because the Association gave nonmembers access to the union for communication of their views.²

²The underlying policy for this holding is that the union, as exclusive bargaining agent, is responsible for formulating the employees¹ position on terms and conditions of employment. This responsibility may be delegated by the union membership. Such a delegation is an internal union procedure from which non-union employees properly may be excluded. However, the delegatee, once selected, must in turn function as a representative for all the employees in the bargaining unit. A procedure of contract ratification restricted to union members is consistent with negotiation of a tentative contract by the bargaining agent, acting in a representative capacity, and with observance of the duty of fair representation. In most cases a general familiarity with the working environment may allow a representative of some experience to appreciate adequately the

As noted, however, El Centro requires "some consideration of the views of various groups of employees and some access for communication of those views . . ." In items (2), (3), and (4) of the charge, you assert that such notice and access was not provided.

My investigation revealed that access and notice were afforded to members and non-members alike.

1. Prior to submission of the Association's initial bargaining proposal, a Negotiation Survey was distributed to all employees in the bargaining unit.
2. A separate survey was conducted among unit employees who are involved in co-curricular activities. Responses to these surveys were used to formulate the Association's initial proposal.
3. All bargaining unit employees were advised to update their addresses and/or phone numbers in the centrex because this was the way in which the Association intended to keep teachers informed over the summer.
4. During the school year, all unit employees receive the "Fontanan" on a bi-weekly basis. This newsletter frequently contained information related to negotiations and contract enforcement.
5. During the course of negotiations, the Association publishes and distributes to all unit employees "From The Table". This publication contained information relative to the status of negotiations.
6. Of a more general but related nature are Association publications such as the "Flash" which contained matters of immediate concern, the "Legislative Letter" and "From The Presidents Desk." At times, all of these have contained matters related to negotiation and all are distributed to each unit employee. It is the Association policy to post all of the above referenced written materials on bulletin boards at each work site.

perspective of all employees. There must be communication access for employees with a divergent view, although there is no requirement of formal procedures. (See e.g., Letter Carriers, Branch 6000 v. NLRB (1979) 100 LRRM 2346.)

7. In addition to written communications, the Association regularly informs unit employees orally on the status of negotiations. The Association Representative Council is comprised of unit members at each worksite. Council members are updated on the status of negotiations during meetings which are held monthly during periods of negotiations. Representative Council members (Building Representatives) are instructed to inform all unit employees at their respective worksites on the status of negotiations. In addition, the Association Building Representatives make announcements at each worksite at the conclusion of each faculty meeting on matters related to negotiations between the Association and the District. All unit employees are not only allowed but are encouraged to remain. Matters related to negotiations are frequently discussed with suggestions and input relayed to the bargaining team.

In light of the foregoing, it does not appear that the charge and evidence currently available clearly and concisely present facts sufficient to constitute a prima facie case of unfair practice.. See Board Rule 32620(b)(5) (regional attorney has the pov7er and duty "to dismiss the charge or any part thereof . . . if it is determined that the charge or the evidence is insufficient to establish a prima facie case"). While the charge makes general allegations that the organization failed to comply with its duty toward the charging parties, the information currently at hand calls into question whether the charging parties did, in fact, receive the specific notice and access described in paragraphs 1-7 above. The charging parties to date have provided no specific information indicating that factual disputes exist with respect to the information described in paragraphs 1-7 above. As a result, further inquiry into the evidentiary underpinnings of the charge is warranted.

Each of the individual charging parties who wish to pursue this case must be prepared to specifically deny that the notice and access described in paragraphs 1-7 above was not provided. The charge must be amended to incorporate those specific denials.

Jeffrey D. Wedekind
November 15, 1983
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Please provide me with the names and telephone numbers of each charging party having personal knowledge of these denials. If appropriate, I will thereafter arrange for telephonic interviews of such witnesses, and may request further supporting documentary evidence. If you would prefer to submit declarations from percipient witnesses, I would be happy to review them to determine whether they meet the evidentiary concerns expressed above.³

The amended charge, and supporting documents as set forth above, must be received by 5:00 p.m. on Wednesday, November 30, or the charge will be dismissed. If you choose to amend the charge, it will be evaluated on an individual by individual basis to determine whether a complaint should issue and, if so, which charging parties should be included.

If you have any questions, please do not hesitate to call. My number is (916) 323-8018.

Very truly yours,

Robert Kingsley
Attorney

³Any declaration must be based on the personal knowledge of the declarant, must include facts showing the *basis* of the witness' personal knowledge, and must comply with the requirements of California Code of Civil Procedure, section 2015.5. If the facts asserted are reliant on a writing, a copy of the writing must be attached to the declaration and authenticated therein.