

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SHERMAN JONES,)
)
 Charging Party,) Case No. LA-CO-294
)
 v.) PERB Decision No. 439
)
 LOS ANGELES COUNTY BUILDING AND) November 27, 1984
 CONSTRUCTION TRADES COUNCIL,)
)
 Respondent.)
 _____)

Appearance: Sherman Jones, on his own behalf.

Before Hesse, Chairperson; Jaeger and Morgenstern, Members.*

DECISION

This case is before the Public Employment Relations Board on an appeal by Sherman Jones of the Board agent's dismissal, attached hereto, of his charge alleging that the Los Angeles County Building and Construction Trades Council violated sections 3543.5 and 3543.6 of the Educational Employment Relations Act (Government Code section 3540 et seq.).

We have reviewed the dismissal and, finding it free from prejudicial error, adopt it as the Decision of the Board itself.

ORDER

The unfair practice charge in Case No. LA-CO-294 is
DISMISSED WITHOUT LEAVE TO AMEND.

By the Board

*Members Tovar and Burt did not participate in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

LOS ANGELES REGIONAL OFFICE
3470 WILSHIRE BLVD., SUITE 1001
LOS ANGELES, CALIFORNIA 90010
(213) 736-3127



May 29, 1984

Ray Van der Nat

Sherman Jones

RE: LA-CO-294, Jones v. Los Angeles County
Building and Constuction Trades Council,
DISMISSAL OF UNFAIR PRACTICE CHARGE

Dear Parties:

The above charge, filed on March 29, 1984, alleges that the Union violated the Act by: a) Failing and refusing to represent Sherman Jones at a formal conference with a College Dean relating to his suspension between September 16 and October 20, 1982; b) Failing and refusing on about March, 1983, to obtain a copy of Jones' personnel folder and a copy of a transcript made during an informal conference relating to an Affirmative Action complaint filed by Jones. The charge fails to establish a prima facie violation of the EERA and is hereby dismissed for the reasons stated below.

Sherman Jones is a painter for the Los Angeles Community College District. He claims that, since about 1980, he has had several problems with the District. Specifically, prior to September, 1982, he had some three meetings with the District based upon Jones' complaints of discrimination and his request for a transfer.¹ On about September 16, 1982, when Jones reported for work, he was told by his supervisors that they had orders not to assign him any work. There were no formal documents given to Jones, nor did anyone tell him that he was suspended or discharged.

Believing that he'd been suspended, Jones called Trades Council official Bud Mathis, but was not able to reach him. He called the next day for Mathis and was referred to Ben Cocks, representative for the painters.²

¹Jones did not seek the Union's help prior to September, 1982.

²See discussion below regarding structure of the Union.

On September 29, 1982, Jones spoke to Cocks by telephone, explained what had been happening to him at work, and asked if Cocks would represent him on the suspension. Jones admits that there was no pending meeting or conference scheduled to discuss his "suspension" at the time he spoke to Cocks.

In response to Jones' statements and questions, Cocks told him to draft a complaint/grievance, to send it to him, and, after reading it, he would let Jones know whether he would appear for him in a grievance and represent him. Jones asked Cocks to come out to the campus and represent him first so that they could reschedule another meeting with the President of the College, the Dean of Administrative Services, and the Building and Grounds Supervisor. Cocks replied in the negative and repeated that he should put his complaints in writing first, and afterward, he would decide whether to represent him. Jones threatened that, if Cocks didn't come out to visit him personally, he would attempt to get an alternative representative. Cocks told him to do whatever he liked.

Jones decided not to draft a complaint and send it to Cocks because he "knew" Cocks was not going to visit him personally. Jones claims that he did not intend to send Cocks anything because it was not "going to do him any good". Jones adds that Cocks was very explicit on September 29 that he was not going to come out and represent him.

Indeed, Jones filed an EEOC complaint against the District on October 7, 1982. He did not then send a copy of this complaint to Cocks, nor of any grievance.³

Instead, according to Jones, he made no attempt to contact Cocks between their last telephone conversation in 1982 and March, 1983. On that latter date, Jones claims that he ran into Cocks at one of the campuses of the District. Jones asked him if Cocks was there to "represent" him. Cocks said he was there on another matter.⁴ Jones claims that he asked Cocks to represent him at least by helping [him] get a transcript of

³Jones returned to work on October 19, 1982.

⁴Jones' EEOC complaints had been denied and he was pursuing the possibility of appeals.

what happened at a previous meeting regarding his EEOC complaints. According to Jones, Cocks asked him to send him a copy of the EEOC complaint, and he "would try to get a copy of the transcript".

Jones admits that this was the only request he made of Cocks during this meeting. Cocks has denied that he even appeared at the Campus on that day, or even spoke to Jones in 1983. In any event, Jones does not know whether Cocks attempted to obtain a copy of the transcript, but claims that he finally sent the copy of the EEOC charge to Cocks in March, 1983.

Jones states that he never received the transcript, nor did he call Cocks thereafter to see if he had tried to obtain the transcript, explaining that it wouldn't have done any good, and that EEOC had refused to provide him (Jones) with a transcript anyway. Jones did not hear from Cocks or anyone else from the Union again.

The Charged Party alleges that no prima facie case exists because: a) The six-month statute of limitations has run; b) The Council is not a proper party and not responsible for the action alleged; c) There was no breach of any duty of fair representation since the Charging Party was responsible for any Union inaction.

There are at least four units of classified employees in the District, each with its exclusive representative, and each with its own collective bargaining agreement. The Technical-Clerical Unit is represented by CSEA, Chapter #507. SEIU, Local 99 represents the Maintenance and Operations Unit. The College Safety and Police Services Unit is also represented by CSEA.

Unlike the others, the Council is recognized as the exclusive representative for a "Crafts" unit, made up of the following crafts and classes: Crafts Classes - carpenters, electricians, heating & air conditioning technicians, locksmiths, machinists, metal workers, painters, plasterers, plumbers, steamfitters, and toolsharpeners; Electronics Classes - electronic instrument technician; Stage Classes - costume makers, stage assistants and stage attendants; Studio Classes - broadcast maintenance engineers, projectionists and sound engineers.

Many, if not all, of LACCD employees in this unit are represented also by their own trade/craft union, as is Jones

May 29, 1984

LA-CO-294

Page 4

(painters). The painters, carpenters and electricians each have their own local.

The Council is an umbrella organization, with no members, but only affiliated local unions. The council's involvement in the public sector came about by reason of the various public entities and their mutual concern over collective bargaining with fragmentary groups representing small crafts units. For instance, some units which would constitute their own classification have but one or two employees therein. It was felt by the public entities that having to conduct separate negotiations with each such unit would be unduly burdensome and costly.

Consequently, the Council, by request of the Public Entity Employers and its affiliated local unions, was asked to become the coordinator or umbrella organization. It was felt that by the council acting as such, this would save substantial time and resources by the Employers in that one negotiating session could be coordinated by the council as opposed to sixteen different sessions (one with each affiliated craft union local).

The council has only been the representative of the crafts unit for three years. Up until about a year ago, the steward system for handling grievances was not formalized. Presently, Ben Cocks is the representative for the painters local, works for that local, and handles grievances for the painters. There is no dispute by Jones that, indeed, Cocks is a representative of the painters local and is not directly an agent of the Trades Council. However, claims Jones, since the Council is bargaining agent, it is equally responsible for Cocks' actions.

The issues of agency need not be resolved, however, since the charge and the facts adduced from Jones himself show that a prima facie violation is lacking.

Government Code section 3541.5 states that PERB cannot 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. The allegations of Union misconduct occurred in September, 1982 and March, 1983. This charge was not filed until March 29, 1984. Alleged Union misconduct occurring prior to September 29, 1983, are thus time-barred. There is no evidence to show that the statutory period should be tolled, especially in light of the fact that, between the Union's

alleged promised to try to get the transcript in March, 1983 and September 29, 1983, the Charging Party did nothing to follow up his request to the Union, or to file a charge with PERB.⁵

Secondly, with respect to Jones' requests for representation in September, 1982, not only is a refusal-to-represent time-barred, but there was no refusal established. The Union representative reasonably asked Jones to put his complaints in writing before he could commit himself to represent him. Jones not only failed to do so, but also told Cocks that he would seek alternate representation. Not having received the written grievance draft, it was reasonable to assume that Jones chose not to pursue that avenue and that he had indeed sought alternate representation. The employee thus failed to perfect his request for representation. Therefore, none of the conduct attributed to the Charged Party is discriminatory, arbitrary, or in bad faith. See United Teachers of Los Angeles (Collins) (1/17/83) PERB Decision No. 258; Dyer v. CSEA (9/12/83) PERB Decision No. 342.

Pursuant to Public Employment Relations Board regulation 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 Notice (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 June 18, 1984, or sent by telegraph or certified United States mail postmarked not later than June 18, 1984 (section 32135). The Board's address is:

⁵ Charging Party was advised by letter dated April 17, 1984 that his charge may be dismissed for failure to meet the statutory filing period. That letter is incorporated herein and attached.

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

If you file a timely appeal of the refusal, any other party may file with the executive assistant to 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 except for amendments to the charge must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany the document filed with the Regional Office or the Board itself (see section 32140 for the required contents and a sample form). The documents 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 executive assistant to the Board at the previously noted address. A request for an extension in which to file a document with the Regional Office should be addressed to the Regional Attorney. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the subject document. The request must indicate good cause for 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 Sullivan
General Counsel

Manuel M. Meigoza
Regional Attorney

PUBLIC EMPLOYMENT RELATIONS BOARD

LOS ANGELES REGIONAL OFFICE
3470 WILSHIRE BLVD., SUITE 1001
LOS ANGELES, CALIFORNIA 90010
(213) 736-3127



April 17, 1984

Sherman Jones

RE: LA-CO-294, Jones v. Los Angeles County
Building and Construction Trades Council

Dear Mr. Jones:

The above charge you filed with our office on March 29, 1984 alleges that the Union violated EERA sections 3543.5 and 3543.6 by certain acts and conduct, all occurring during 1982 and the early part (March) of 1983. For example, you allege that you first called the Union for assistance on a job-related problem on September 16, 1982, but the representative never returned your call. Further, you allege that Ben Cocks, Union Representative, refused to represent you at a formal meeting called by the College Dean of Administrative Services scheduled during a period of September 16 to October 20, 1982. The most recent allegation in your charge is that your formal complaint addressed to V.C. "Bud" Mathis of the Council was totally ignored in March, 1983. The remaining paragraphs do not contain dates.

Prior to your filing this charge, I spoke to you on the telephone on March 9, 1984, explaining to you that your claims were probably time-barred because they occurred more than six months before. You explained to me that you were suspended from your job in late 1982 or early, 1983. After some unsuccessful attempts in acquiring Union representation, you finally sent in a written grievance to the Union in March, 1983. This was the last time you attempted to call the Union. You received no word from them of its status, and found out in April, 1983 that it was not going to do anything on your behalf.

Section 3541.5(a) of the Government Code prohibits the PERB from issuing a complaint in respect of any charge based upon any alleged unfair practice occurring more than six months prior to the filing of the charge. See Lincoln v. Machinists District 9, 115 LRRM 2281. In your case, conduct committed by the Union prior to September 29, 1983, is barred by the above Code section. Therefore, the allegations in your charge do not establish a prima facie violation of the EERA.

LA-CO-294
April 17, 1984
Page 2

Unless you submit a letter requesting that this charge be withdrawn, I shall be forced to dismiss your charge. It is possible that, through inadvertence, you neglected to allege conduct that might constitute a violation within the six month statutory period. If this is so, please amend your charge accordingly. If this charge is not amended to state a prima facie violation, or is not withdrawn by April 26, 1984, it will be dismissed. I encourage you to correct any representations made above prior to said date.

Sincerely,

Manuel M. Melgoza
Regional Attorney

MMM:djm