

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



EARLEAN B. SANDERS,)
)
 Charging Party,) Case No. LA-CO-305
)
 v.) PERB Decision No. 509
)
 COMPTON EDUCATION ASSOCIATION,) June 21, 1985
)
 Respondent.)
 _____)

Appearance; Earlean B. Sanders, on her own behalf.

Before Hesse, Chairperson; Jaeger, Morgenstern, Burt and Porter, Members.

DECISION

This case is before the Public Employment Relations Board (Board) on appeal by the Charging Party of the Board agent's dismissal, attached hereto, of her charge that the Compton Education Association violated section 3543.6(b) of the Educational Employment Relations Act (Government Code section 3540 et seq.).

We have reviewed the Board agent's 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-305 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

By the BOARD

PUBLIC EMPLOYMENT RELATIONS BOARD

Headquarters Office
1031 18th Street, Suite 200
Sacramento, California 95814
(916) 323-8015



January 31, 1985

Ms. Earlean Saunders

Ronald A. Knell

Re: Sanders v. Compton Education Association, Case No. LA-CO-305

Dear Ms. Sanders:

The above referenced charge alleges that Respondent Compton Education Association (CEA) violated Government Code section 3543.5(b) by engaging in "unfair, arbitrary, discriminating and in bad faith" practices.

In a letter dated December 19, 1984, I indicated to you that the charge did not state a prima facie case and that unless you amended the charge to state a prima facie case or withdraw it prior to December 31, 1984, it would be dismissed. More specifically, I informed you that if there were any factual inaccuracies in the letter or additional facts which would correct the deficiencies explained in that letter, you should amend the charge accordingly. You requested and were granted three extensions of time in order to respond to my December 19, 1984 letter, the last one setting a deadline of January 22, 1985. On that date, you filed a First Amended Unfair Practice Charge alleging as follows:

1. This is a public Agency with a membership that should abide by the Fair Democratic Processes ad [sic] and CEA has failed to operate in good faith with:
 1. Inadequate notices and time allotment for teacher/Certificated Members participation. See EXHIBIT # in district-wide meetings where INPUT was not given for proposal for 1984-85 because less than 12 persons showed.
 2. Received No input from Certificated Members for Negotiations '84-'85.
 3. Disproportionately number of representatives and members on CEA-Building Representatives Meetings. There is No quorum. No input from staff.-sites.

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4. Negotiations were done improperly for 1984-85 inclusive of our Health Benefit Packet. A vote to confirm our health benefit packet was improper, and unfairly.

In addition to the above charges, a five-page letter entitled "Allegations against CEA" was attached to the charge form. That letter discusses some 14 separate instances of conduct on the part of CEA which is alleged to support the four general allegations contained on the charge form itself, cited above. Some of these also appear to be supportive of your allegation in the original charge that CEA had "failed to seek proper votes of negotiation items from constituency prior to negotiating for certificated contract for '84-'85 school year as well as '83-'84 school year."

They include allegations that:

1. CEA failed to adequately receive member input in its contract negotiations;
2. CEA failed to notify teachers that dues had increased;
3. Fewer council members are in attendance at meetings, and CEA acts without a quorum being present;
4. Executive Director Georgia Maryland's "friends", on the Executive Board of CEA support her actions;
5. Clerks employed by CEA receive "too high salaries."
6. A CEA Executive Board member, who functions as CEA's auditor is married to CEA's financial secretary, creating a conflict of interest;
7. Executive Director Marland did not keep her promise to you that the membership would have a choice as to health plans;
8. You have been denied an opportunity to serve on CEA's contract negotiating team;
9. CEA provided insufficient notice of a meeting which took place in September 1984 to discuss "bargaining status;"
10. CEA required its members to vote on parts of the proposed 84-85 contract rather than on the whole;

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11. CEA's agreement to the District Paid plan over the Cafeteria plan caused you to lose a Tax Shelter Annuity benefit;
12. CEA has failed to provide you with a copy of its contract proposals to the district;
13. CEA requested the change from the old Cafeteria Plan to the new District-paid plan;
14. CEA failed to perform an adequate survey of its members regarding their preference for a health plan when you requested such on behalf of 21 employees who work at your school site.

As stated at page 3 of my December 19, 1984 letter to you, a labor organization's duty of fair representation extends only to union "activities that have a substantial impact on the relationships of unit members to their employers..." and does not apply to those "...activities which do not directly involve the employer or which are strictly internal union matters." Service Employees International Union, Local 99 (10/19/79) PERB Decision No. 106, at p. 8. Each of the 14 instances of CEA conduct which have been submitted in support of the charge would appear to lack a "substantial impact on the relationships of unit members to their employers." The additional information provided along with the First Amended Charge fails to disclose any evidence that any of the conduct attributed to CEA involved other than internal union activities. The First Amended Charge, therefore, fails to cure the deficiencies in the original charge cited in my letter of December 19, 1984, and a prima facie case of a violation of Government Code section 3543.5(b) has not been demonstrated. I must therefore dismiss your charge.

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 February 20, 1985, or sent by telegraph or certified United States mail postmarked

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not later than February 20, 1985, (section 32135). The Board's address is:

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

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 _____
Jorge A. Lebn
Staff Attorney

Attachment: Letter December 19, 1984

PUBLIC EMPLOYMENT RELATIONS BOARD

HEADQUARTERS OFFICE
1031 18TH STREET
SACRAMENTO, CALIFORNIA 95814
(916) 322-3088



December 19, 1984

Ms. Earlean Sanders

Re: Sanders v. Compton Education Association. LA-CO-305

Dear Ms. Sanders:

You have filed a charge against the Compton Education Association (CEA) alleging that the Respondent "failed to seek proper votes of negotiation items from constituency prior to negotiating for certificated contract for '84-'85 school year as well as '83-'84 school year."

My investigation uncovered the following facts. You are a 4th grade teacher, employed by the Compton Unified School District. You have been, during the period of time relevant herein, a building representative for CEA.

Collective bargaining agreements in effect between the parties prior to the end of the 1983-84 school year provided that the members would be covered by a health plan known as the Cafeteria Plan. During negotiations for the current contract the CEA proposed, and the District agreed, to switch to a new health plan known as the District-paid plan. You were one of an uncertain number of employees in the 1,253 member unit who preferred the existing Cafeteria Plan.

In May 1984, you presented a petition to the CEA Executive Board signed by 21 Ralph Bunche Elementary School staff requesting that CEA conduct a survey to determine the fringe benefit packet for the 1984-85 school year. The petition stated, "Presently, 19 of 21 certificated CEA members at our site are interested in maintaining their Existing Health Plan -the Cafeteria Plan."

On May 17, 1984, you addressed a meeting of the District Board of Education to express: (1) your preference for the existing health plan; (2) your concern that CEA does not know what its members want; and (3) the failure of CEA to survey its members' desires on contract proposals. At that meeting, Floyd Worsham,

another teacher and a CEA member, advised the Board that CEA had, in fact, held two open hearings for teachers to express their views on contract proposals and that, in his opinion, CEA members "do have an opportunity to give input on things that are negotiated." While you do not share Mr. Worsham's views on CEA's openness to member input, you did not dispute his comments at the Board meeting.

On August 20, 1984, CEA conducted a survey of its members regarding the health plan. Of the approximately 700 employees responding, some 400 chose the District-paid over the old plan. A few weeks later, on September 13, 1984, a CEA meeting was announced to take place that same day regarding contract items. You telephoned Georgia Maryland, the CEA Executive Director, to protest the short notice, to ask whether the meeting was merely for show, and to express your opinion about the survey. One week later, on September 20, 1984, at an Executive Board meeting of CEA, you addressed that body to express several concerns, including: (1) the fact that you weren't being allowed to vote on ratification of health plan agreement in the manner which you understood would occur from a conversation with Ms. Maryland; (2) the August survey should have been done before the end of the 1983-84 school year; (3) the short notice of the September 13 meeting did not allow many members to attend; (4) you had still not seen a copy of CEA's initial proposals.

On November 2, 1984, you wrote a letter to the Executive Board which principally concerned your opinion that the Executive Director should be terminated because she has been "... negligent . . . incompetent yet political . . ." The letter also noted your opinion that "we" wanted the existing health plan over the District-paid plan.

The collective bargaining agreement in existence between the parties does not call for any specific procedure for CEA to obtain membership input. Nor do the CEA's by-laws call for any specified procedures.

ANALYSIS

The charge you have filed does not allege a violation of any specific Government Code section. However, the conduct alleged can be analyzed most closely as an allegation of a Government Code section 3543.5(b) violation. Such a violation occurs if there has been a breach of the duty of fair representation.

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which is provided in section 3544.9. The PERB has held that with regard to contract negotiations the

Duty of Fair Representation implies some consideration of the views of various groups of employees and some access for communication for those views, but there is no requirement that formal procedures be established. (Emphasis added.)

El Centro Elementary Teachers Association (8/11/82) PERB Decision No. 232. at p. 15-16.

The charge alleges that CEA "failed to seek proper votes," and your written communications with the school board and with the CEA Executive Board indicate that you sought a formal vote on the health plan and on other contract matters as well before CEA entered negotiations with the District. However, inasmuch as neither the contract nor the by-laws provide any specified procedure, it appears from the facts that CEA has met its duty to receive member input. You communicated your views to the Executive Board and to the Executive Director on more than one occasion both verbally and in writing. The CEA, did, in fact, conduct a survey of its members in August, 1984.

Meetings were held by CEA on September 13, 1984 and on prior occasions at which members were permitted to voice their views, and there is no allegation that CEA at any time refused to consider your comments. For these reasons, the charge fails to show a breach of the duty of fair representation by CEA for failure to provide its members access to communicate their views.

Alternatively, a labor organization can breach its duty of fair representation by engaging in conduct toward a member that is arbitrary, discriminatory or in bad faith. Redlands Teachers Assn. (9/25/78) PERB Decision No. 72. However, the duty of fair representation extends only to union "activities that have a substantial impact on the relationships of unit members to their employers . . ." and does not apply to those " . . . activities which do not directly involve the employer or which are strictly internal union matters." Service Employees International Union. Local 99 (10/19/79) PERB Decision No. 106, at p. 8.

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CEA's failure to "seek proper votes" concerning the health plan is a matter of internal union affairs. Its methods in obtaining membership input on the health plan are not a matter that concerns your relationship, as an employee, to Compton Unified School District, and are therefore, beyond this Board's reach.

For these reasons, the charge you have filed does not state a prima facie case. If you feel that there are any factual inaccuracies in this letter or any additional facts which would correct the deficiencies explained above, please amend the charge accordingly. The amended charge should be prepared on a standard PERB unfair practice charge form clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before December 31, 1984, I shall dismiss your charge. If you have any questions on how to proceed, please call me at (916) 323-8015.

Sincerely yours, ..

Jorge Leon
Staff Attorney