STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

M. A. CHESTANGUÉ, Charging Party,	)	Case No. SF-CO-278
v.	)	PERB Decision No. 544
SAN FRANCISCO CLASSROOM TEACHERS ASSOCIATION, CTA/NEA, Respondent.	)	December 13, 1985

Appearances: M. A. Chestangué on her own behalf; Christine Bleuler, Attorney, California Teachers Association for San Francisco Classroom Teachers Association, CTA/NEA.

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

DECISION

This case is before the Public Employment Relations Board on appeal by charging party of the Board agent's dismissal, attached hereto, of her charge alleging that the San Francisco Classroom Teachers Association, CTA/NEA violated the Educational Employment Relations Act (Gov. Code sec. 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. SF-CO-278 is DISMISSED WITHOUT LEAVE TO AMEND.

By the BOARD.

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 439-6940

August 5, 1985

M. A. Chestangué

Christine Bleuler
California Teachers Assn.

Re: REFUSAL TO ISSUE COMPLAINT AND DISMISSAL OF UNFAIR PRACTICE CHARGE
M. A. Chestangué v. San Francisco Classroom Teachers Association
Charge No. SF-CO-278

Dear Parties:

Pursuant to Public Employment Relations Board (PERB) Regulation section 32730, a complaint will not be issued in the above-referenced case and the pending charge is hereby dismissed 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 July 1, 1985 M.A. Chestangué filed an unfair practice charge against the San Francisco Classroom Teachers Association, CTA/NEA (Association) alleging facts which purport to set forth a violation of EERA section 3543.6(b) and 3544.9. Specifically, charging party describes an incident which occurred on June 5, 1984 and one which occurred in August 1984, and claims that they represent instances in which the Association breached the duty of fair representation owed to her.

On July 18, 1985 the regional attorney wrote a letter to charging party warning that the charge, as written, failed to state a prima facie violation of EERA section 3543.6(b) and 3544.9, and that it would be dismissed on July 25, 1985 if not withdrawn or amended by such date. Legal authorities were cited in that letter, the reasoning was explained, and questions were posed to charging party in an attempt to describe what type of facts would have to be alleged in order to cure the defects of the charge.

---

[1]References to the EERA are to Government Code sections 3540 et seq. PERB Regulations are codified at California Administrative Code, Title 8.

On July 23, 1985 the regional attorney had a conversation with M. A. Chestangué concerning the warning letter of July 18, 1985. Charging party requested additional time within which to submit an amendment. It was agreed that charging party would have until August 5, 1985.

On July 31, 1985 charging party filed an amended unfair practice charge.[2] Specifically, the first amended charge alleges that incidents occurring on November 15, 1982, July 11, 1983, July 15, 1983, and September 29, 1983 constitute instances in which the Association breached the duty of fair representation owed to her. Charging party alleges that the unfair treatment she received from the Association not only continued but intensified between November 15, 1982 and July 31, 1985. On July 31, 1985, the PERB office also received a three-page letter from charging party which described incidents occurring on December 1, 1983 and July 4, 1984. Neither the charge nor the letter describe incidents occuring within the six months preceding the filing of the original charge.

The warning letter of July 18, 1985 sent by the regional attorney to charging party, as well as the July 31, 1985 letter from charging party to the regional attorney, are hereby attached and incorporated by reference.

Statute of Limitations: Continuing Violation

In some decisions interpreting the National Labor Relations Act, it has been found that a recurrence of unlawful conduct constitutes a "continuing violation." Pursuant to that doctrine, a charge will not be barred on the ground that it concerns conduct which occurred, and was known to charging party, more than six months prior to being filed as long as the conduct recurred within the six-month period. In San Dieguito Union High School District (1982) PERB Decision No. 194, PERB discussed the federal cases, adopted the concept of a "continuing violation," but nevertheless dismissed the charge on the ground that the six-month limitation period had been exceeded. In that case, a school district was charged with having unilaterally changed a prior practice when it enforced on a daily basis a policy that required teachers to sign-out before leaving campus. PERB was unable to find a "continuing violation" even though the employer's sign-out policy was enforced on a continuing basis well into the statute of limitations period.

---

[2]The amendment was not properly served on the charged party. The Notice of Appearance submitted by charged party, and served on charging party, designates its attorney as its representative. Service was made on the organization instead of the attorney.

In El Dorado Union High School District (1984) PERB Decision No. 382, the Board cited San Dieguito for the proposition that,

> . . . a continuing violation would only be found where active conduct or grievances occurred within the limitations period that independently constituted an unfair practice. (Citations omitted.) However, a continuing violation would not be found where the employer's conduct during the limitations period constituted an unfair practice only by its relation to the original offense. (Citations omitted.) Where the underlying theory of the charge is an alleged unilateral change occurring outside the limitations period, the employer must engage in conduct during the limitations period such as reimplementation or subsequent refusal to negotiate . . . [which] revive[s] the viability of the unfair practice.

In El Dorado the district unilaterally instituted a new policy requiring all teachers hired by the district to sign an addenda to their teaching contract agreeing to coach at least two school sports teams during the year. The Board held that the sole violation occurred when the district adopted the new policy. Requiring new teachers to sign the addenda during the limitations period did not satisfy the San Dieguito requirement that the employer's subsequent conduct constitute a "reimplementation or revival of the policy."

Duty of Fair Representation

There is no duty of fair representation owed to a unit member unless the exclusive representative possesses the exclusive means by which such employee can obtain a particular remedy. The exclusive representative possesses the sole means by which a unit member has access to the negotiation process, as well as the grievance and arbitration procedure. There are, however, alternative sources of assistance available to a unit member who seeks to enforce rights under the Education Code. See Archer v. Airline Pilots Assn. (9th Cir. 1979) 609 F.2d 934 [102 LRRM 2827] cert. den. (1980) 446 U.S. 953 [104 LRRM/2303]; (International Brotherhood of Workers v. Foust (1979) 442 U.S. 42, 46-47 [101 LRRM 2365]; Lacy v. Automobile Workers Local 287 (S.D.Ind. 1979) 102 LRRM 2847; and Freeman v. Teamsters Local 135 (7th Cir. 1984) 746 F.2d 1316 [117 LRRM 2873].

Charging party has failed to state a prima facie violation of EERA sections3543.6(b) and 3544.9. The allegations which purport to describe unfair practices occurring more than six months before the filing of the

above-referenced charge are time-barred. There is no legal support for charging party's claim that the incidents she describes as occurring in 1982, 1983 and 1984 have had a continuing effect. San Dieguito Unified School District, supra.

Charging party may intend for the incidents described by her in the original as well as the amended unfair practice charge to present examples of the type of allegedly unfair representation she received from the Association. However, the charge fails to satisfy the requirement of PERB Rule 32615(a)(5) which states that the charge must contain

> a clear and concise statements of the facts and conduct alleged to constitute an unfair practice.

The charge, as well as the amendment, are void of references to incidents occurring within the required period. Additionally, to the extent charging party complains of conduct by the Association concerning her request that it represent her in Education Code section 44942 proceedings, the federal cases cited above are controlling. Those cases, decided under the NLRA, are based on the rationale accepted by PERB: the duty of fair representation is a quid pro quo for the right of exclusivity enjoyed by the employee organization. SEIU, Local 99 (Kimmett), supra. The Association is under no EERA obligation to represent the interests of a unit member in areas where it does not have the exclusive right to seek a remedy. Accordingly, the allegations of the charge and the amendment are dismissed and no complaint will be issued thereon.

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 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 August 25, 1985, or sent by telegraph or certified United States mail postmarked not later than August 25, 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 each copy of a document served upon a party or 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 specific time limits, the dismissal will become final when the time limits have expired.

Very truly yours,

DENNIS M. SULLIVAN
General Counsel

By _____
PETER HABERFELD
Regional Attorney

cc: General Counsel

STATE OF CALIFORNIA GEORGE DEUKMEJIAN, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD
San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, California 94108
(415) 557-1350

July 18, 1985

M. A. Chestangué

Re: M. A. Chestangué v. San Francisco Classroom Teachers Association
Charge No. SF-CO-278

Dear M. A. Chestangue:

On July 1, 1985, M. A. Chestangué filed an unfair practice charge against the San Francisco Classroom Teachers Association, CTA/NEA (Association) alleging facts which purport to set forth a violation of EERA sections 3543.6(b) and 3544.9. Specifically, charging party describes two situations wherein the Association allegedly breached the duty of fair representation owed to her.

The first incident occurred on June 5, 1984. On that occasion management personnal of the San Francisco Unified School District (District) and police allegedly removed her from her classroom. In June, July and August 1984, charging party asked the Association to "mediate and arbitrate on her behalf." She complains that the Association did no more than write a letter on her behalf, and thereby breached the contract as well as acted toward her in a manner that was arbitrary, discriminatory and in bad faith.

A second incident occurred in August 1984, when the District allegedly put together a fabricated complaint accusing her of mental illness. The District initiated an action against her under Education Code section 44942. She complains that the Association did not properly represent her in that hearing process, specifically that it allowed the District to invade her personnel file for material used to bolster the report against her, did not challenge use by the District of information that dated from the 1950's and, did no ensure her a hearing. Charging party objects on the ground that she was a dues payer and therefore should be entitled to representation by the Association in such proceedings and, further, that the contract provision requiring arbitration and mediation of behalf of unit members gave her rights which the Association did not enforce.

On June 19, 1985 and June 21, 1985 charging party had telephone conversations with the regional attorney in which she explained the recent history of her employment with the District. Those conversations revealed the following. Charging party was placed on mandatory leave beginning in September 1979 and ending in June 1980. However, on June 2, 1981 she was telephoned by personnel

director Seymour and asked to resume teaching with the District at Guadalupe School. She worked with the District until June 5, 1984 when she was removed by the new principal. She has not been employed by the District since that time.

In San Dieguito Union High School District (2/25/82) PERB Decision No. 184, PERB held that, to state a prima facie violation, charging party must allege and ultimately establish that the alleged unfair practice either occurred or was discovered within the six-month period immediately prceding the filing of the charge with PERB. EERA section 3541.5; Danzansky-Goldberg Memorial Chapels, Inc. (1982) 264 NLRB 112 [112 LRRM 1108]; American Olean Tile Co. (1982) 265 NLRB No. 206 [112 LRRM 1080]; A.F.C. Industries, Inc. (Amcar Division) (1978) 234 NLRB 1063 [98 LRRM 1287], enf'd as modified (8 Cir. 1979) 596 F.2d 1344 [100 LRRM 3074]. The National Labor Relations Board cases cited here hold that the six-month period commences on the date the conduct constituting the unfair practice is discovered. It does not run from the discovery of the legal significance of that conduct.

Charging party has alleged that the exclusive representative denied her the right to fair representation guaranteed by section 3544.9, and thereby violated section 3543.6(b). The fair representation duty imposed on the exclusive representative extends to contract negotiations (Redlands Teachers Association (Faeth) (1978) PERB Decision No. 72; SEIU, Local 99 (Kimmett) (1979) PERB Decision No. 106; Rocklin Teachers Professional Association (Romero) (1980) PERB Decision No. 124; El Centro Elementary Teachers Association (Willis) (1982) PERB Decision No. 232), contract administration (Castro Valley Teachers Association (McElwain) (1980) PERB Decision No. 149; SEIU, Local 99 (Pottorff) (1982) PERB Decision No. 203), and to grievance handling (Fremont Teachers Association (King) (1980) PERB Decision No. 125; United Teachers of Los Angeles (Collins) (1983) PERB Decision No. 258). PERB has ruled that a prima facie statement of such a violation requires allegations that: (1) the acts complained of were undertaken by the organization in its capacity as the exclusive representative of all unit employees; and, (2) the representational conduct was arbitrary, discriminatory, or in bad faith.

Whether the Association's failure to pursue a hearing on behalf of charging party or to represent her in a particular manner constitutes a breach of the duty of fair representation depends on whether the Association was obliged by EERA section 3544.9 to initiate and represent her at a hearing under Education Code section 44942. PERB has accepted the rationale applied by the National Labor Relations Act (NLRA) (29 U.S.C. sections 151 et seq.). Kimmett v. Service Employees International Union, Local 99 (1979) PERB Decision No. 106. There, the doctrine was fashioned by the courts as a quid pro quo for the rights and powers granted by that statute to an employee organization which, by reason of its majority status, is entitled to act as the exclusive representative for the bargaining unit. International Brotherhood of Electrical Workers v. Foust (1979) 442 U.S. 192 [101 LRRM 2363, 2367] (citing Steel v. Louisville & Nashville RR Co. (1944) 323 U.S. 192 [15 LRRM 708]; Humphrey v. Moore (1964) 375 U.S. 335 [55 LRRM 2031]; Vaca v. Sipes (1967) 386 U.S. 171

[64 LRRM 2369]). It follows that the union's obligation does not extend beyond its duty to represent fairly the interests of all bargaining unit members during the negotiation, administration and enforcement of collective bargaining agreements. IBEW v. Foust, supra, p. 2367.

The Association has no obligation under the EERA to represent unit members concerning infringements of non-contractual rights. Although PERB has not yet had occasion to so hold, it appears that the exclusive representative is not obligated under EERA's "duty of representation" (section 3544.9) to represent a unit member's rights under Education Code section 49442.[1] It may be, however, that such representation will be provided by the organization as a benefit of membership.

The charge, as presently set forth, fails to state a prima facie violation of EERA sections 3543.6(b) and 3544.9. First, to the extent the charge is based on events which occurred prior to January 1, 1985, they are time-barred. San Dieguito, supra. Of what conduct is charging party complaining? On what date date did it occur? When, if at all, did the hearing under Education Code section 44942 take place? When should it have taken place? What did charging party request the Association to do on her behalf? To whom did charging party make the request? When was the request made? Was it made in writing? If so, please attach a copy. Did the Association representative to whom the request was made agree to do something on charging party's behalf? If so, what? What facts does charging party have which could demonstrate that the exclusive representative's action or inaction was arbitrary, discriminatory or in bad faith? Without such facts, occurring within the six months preceding the filing of the charge on July 1, 1985, the charge does not state a prima facie violation.

Second, the charge fails to set forth terms of the collective bargaining agreement in effect between the District and the Association which guaranteed charging party rights that she allegedly asked the Association to assert, and in regard to which she received no representation. Absent reference to the relevant contract provisions, assuming they exist, charging party has failed to meet the standard set forth in PERB Rule 32615(a)(5).[2]

If you feel that there are facts which would correct the deficiencies explained above, please amend the charge accordingly. The amended charge

---

[1]Education Code section 44942 is attached to this letter as Appendix 1.

[2]PERB Rule 32615(a)(5) states that an unfair practice charge must contain

> a clear and concise statement of the facts and conduct alleged to constitute an unfair practice.

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 on or before July 25, 1985, I shall dismiss your charge. If you have any questions on how to proceed, please call me at (415) 557-1350.

Sincerely yours,

Peter Haberfeld
Regional Attorney

M. A. Chestangué

Friday, July 26th, 1985.
(415) 668 - 6467

Public Employment Relations Board

1 7 7 Post Street

San Francisco, California 94108

ATTENTION: Peter Haberfeld an amended charge - *SF-CO-278*

In response to your letter of July 18, 1985 beginning with the second complete paragraph of page 3...

1. The SFCTAssociation was asked to conduct an investigation about the annual salary of M.A.Chestangué(Jonas). The request was made November 15, 1982.

2. An old brief case that contained all of the salary documentation that pertained to M.A.Jonas-Chestangué dating back to 1951 with the SFUSDistrict was taken to the SFCTAssociation so that Mr.McMurray could check and compare what I had received from the SFUSDistrict as salary and what I should have received from the SFUSDistrict. This was done on July 11, 1983.

3. A letter was sent to President Dellamonica and ExecutiveDirector McMurray asking the SFCTAssociation to investigate and to then file a grievance on behalf of M.A.Jonas-Chestangué about previous Sick Leave Times; Sick Days that the District used of mine-wrongfully; State Teachers Retirement Time that has been with-held from the M.AJonas-Chestangué Retirement Fund; Improper Salary payments to M.A.Jonas-Chestangué and Reclassification of M.A.Jonas-Chestangué at WILL and without benefit of pay. Friday, July 15'83.

4. The SFCTAssociation was asked in a letter to do something about these various issues: Assignments to Classes, Salary, Harassment, Intimidation, Teacher Aid Time, Starting and Stopping Teaching Time, Class Size Stipends inaccurately computed for the years1983 and 1984 and release times to have the use of the rest rooms. *The date for item 4. is September 29, 1983.*

Mr. Haberfeld your statement"The charge, as presently set forth, fails to state a prima facie violation of EERA sections 3543.6(b)and 3544.9. First, to the extent the charge is based on events which occured prior to January 1, 1985, they are time-barred." is being challenged.

The start of this amended charge begins with November 15, 1982 and continues to today's date; not just continued but intensified; therefore I can not believe that the EERA section 3543.6(b)and 3544.9 will or can time-bar the M.A.Jonas-Chestangué Charge against the SFCTAssociation because what was done by the SFCTAssociation was insufficient based upon

the Contract that the Association of Teachers has with the SFUSDistrict.

On Monday, December 1, 1983 I met Mr. McMurray at the SFCTAssociation Office about 3:15p.m. for the purpose of seeing an attorney(A. Leonard Bjonklund, 765 Bridgeway Sausalito,Calif.453-7121). Mr. McMurray took me in his automobile to San Raphael,Calif. to discuss my case with attorney Bjonklund. There has been no other communication with AttorneyBjonklund about the problems of M. A. Chestangué from December 1, 1983 to this day in 1985...to me this non-response is totally incredible!

Wednesday, July 4, 1984 a letter was sent to the SFCTAssociation asking McMurray what he was doing to resolve the Grievances of M.A.Jonas-Chestangué. On July 9, 1984 a letter came back to me from Mr. McMurray putting the total blame of the Chestangué issue upon M.A.Chestangué.This is a quote from that letter"the initial Disciplinary Action was a surprise to us all because you did not pick up your certified mail." My response to that quote is that the SFUSDistrict has adamantly refused to use my name as it is and should be; therefore, the mail that was sent t o me by the SFUSDistrict was not picked up from the Post Office. The District used this tactic to 'time-bar' the Chestangué issue. The opinion of M. A. Chestangué is that this is a method that is used by the SFUSDistrict to harass, intimidate and try to de-humanize me to the point that I will abandon my case. That is fallacious thinking on the part of the SFUSDistrict and the SFCTAssociation. M. A. Chestangué will continue this struggle until she gets justice under the LAW OF THIS LAND.

M. A. Chestangué was born in these United States of America on August 9, 1923. She has served the United States of America in the Women's Army Corporation from April 1944 through June 1946. She graduated from the State Teachers College of San Francisco in January 1951 with a Certificate to Teach any where in the State of California. A LIFE CREDENTIAL from the State of California was granted to M.A.Jonas-Chestangué in 1958. M. A. Jonas-Chestangué began to teach for the SFUSDistrict on the first Monday in February 1951.

The SFUSDistrict and the professional organizations that have had CONTRACTS to represent the teachers here in San Francisco have 'run-ruff-shod' *over*M.A.Jonas-Chestangué for too long!!!

I am entitled to DUE PROCESS of the LAW as a citizen in excellent standing in this Country; yet, I am being thwarted by the very legal bodies(PERB for example)that should be aiding me. You, Mr. Haberfeld, know as well as I know that the information that I have presented to you *is* sufficient to proceed with the case of M.A.Chestangué. I do not know what your reasons are...

Please, Mr. Haberfled, use this information as an amended charge and 'get-on' with the M.A.Chestangué Complaint against the SFCTAssociation.

I implore you! not to dismiss this charge that M. A. Chestangué has made against the San Francisco Classroom Teachers Association.

Signed M. A. Chestangué