

STATE OF CALIFORNIA
 DECISION OF THE
 PUBLIC EMPLOYMENT RELATIONS BOARD



MARY E. FRY,)	
)	
Charging Party,)	Case No. LA-CO-20-S
)	
v.)	PERB Decision No. 604-S
)	
CALIFORNIA STATE EMPLOYEES')	December 30, 1986
ASSOCIATION,)	
)	
_____ Respondent.)	

Appearance; Mary E. Fry, on her own behalf.

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

DECISION

BURT, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Mary E. Fry of a regional attorney's refusal to issue a complaint and dismissal of her charge alleging that the California State Employees' Association (CSEA) unlawfully refused to accept her resignation from that organization in violation of the State Employer-Employee Relations Act (SEERA) section 3519.5(b).¹

¹SEERA is codified at Government Code section 3512 et seq, All references are to the Government Code unless otherwise specified. SEERA section 3519.5 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.

DISCUSSION

Fry's bargaining unit was covered by a collective bargaining agreement (Contract) which expired on June 30, 1985. The Contract contained a maintenance-of-membership provision that restricted CSEA members' right to resign membership by requiring submission of written withdrawals within 30 days prior to the expiration date of the Contract.² The charge alleges that, prior to the June 30 expiration date, the parties agreed to extend the Contract on a day-to-day basis until a new agreement was reached. Fry alleges that she wrote to CSEA on July 3, 1985 to resign her membership, but that CSEA refused to accept her resignation, even though the parties had not yet reached agreement on a successor contract.

The issue presented is whether or not the day-to-day extension of the Contract would bar resignations submitted after the expiration date of the original Contract. The Board agent found that the extension did bar Fry's resignation and,

²This Contract provision reads in pertinent part:

. . . any employee may withdraw from the Union by sending a signed withdrawal letter to CSEA . . . within 30 clalendar [sic] days prior to the expiration of this Agreement.

The provision is consistent with SEERA section 3513(h) which authorizes maintenance-of-membership provisions but states that such provisions do not apply to an employee who requests to resign in writing within 30 days prior to expiration of the contract.

thus, that her allegations did not state a prima facie case. She therefore dismissed the charge. Based on the facts alleged,³ we disagree.

Although the Board has not previously addressed this issue, we find we need not look farther than the clear language of the Contract provision. Civil Code section 1639. Here, the Contract provided that resignations were barred except for those presented "within the last thirty days of the contract." Thus, Fry had an opportunity to resign during the month of June. If the contract terms, including this one, were indeed extended on a day-to-day basis and if Fry's written request to resign were received on or about July 3 and before a successor contract was agreed to, her request falls literally within the last 30 days prior to the expiration date of the contract. For this reason, we hold that, as a matter of law, the contract extension before us did not bar Fry's resignation. Moreover, the terms of section 3513(h) would preclude the parties from extending the agreement without also extending the time within which a member could resign membership.

Having found this to be so, we also find that Fry has stated a prima facie case of interference in violation of

³For purposes of ruling on an appeal of a dismissal of a charge, the facts alleged in the charge are presumed true. State of California (Department of General Services). (1983) PERB Decision No. 302-S.

section 3519.5(b). Clearly, a union's improper denial of a member's right to resign membership interferes with that employee's exercise of the right under section 3515 to refuse to join or participate in the activities of an employee organization and the right under section 3513(h).

ORDER

The Public Employment Relations Board hereby Reverses the dismissal of the charge in Case No. LA-CO-20-S and ORDERS that the General Counsel ISSUE a complaint on Mary E. Fry's allegations.

Chairperson Hesse and Member Porter joined in this Decision. Member Morgenstern's dissent begins on page 5.

Morgenstern, Member, dissenting: I reject the majority's conclusion that Fry's July 3 attempt to resign was effective. The original contract fully complied with the law by providing an escape period from June 1 to June 30. The day-to-day extensions agreed to by the parties did not intrude on the guaranteed 30-day period. When Fry let this time-certain period pass, she did so at the risk that a new contract or an extension would prohibit her resignation until a new escape period arrived.

While I acknowledge that long or repeated extensions could theoretically be used to undermine employees' right to refuse to participate in union activities, I am guided by the Board's decision in Alum Rock Union Elementary School District (1986) PERB Order No. Ad-158. Absent evidence of bad faith conduct, the interest in protecting a stable bargaining relationship outweighs the incremental benefit to employee free choice that is gained by adding additional days to the resignation period. Here, the charge merely alleges that the contract was extended on a day-to-day basis until a new contract could be hammered out. No bad faith conduct is alleged, nor are we faced with a long extension which might seriously impinge upon free choice.

In balance, I therefore conclude that the charging party here has not suffered any infringement of her statutory right to participate or not participate in an employee organization.