

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



GEORGE V. MRVICHIN,)
)
Charging Party,) Case No. LA-CO-416
)
v.) PERB Decision No. 661
)
CALIFORNIA SCHOOL EMPLOYEES)
ASSOCIATION,) April 1, 1988
)
Respondent.)
_____)

Appearances; George V. Mrvichin, on his own behalf; Marci B. Seville, Attorney, for California School Employees Association. Before Hesse, Chairperson; Porter, Craib and Shank, Members.

DECISION AND ORDER

This case is before the Public Employment Relations Board (Board) on appeal by Charging Party of the Board agent's dismissal, attached hereto, of his charge that the California School Employees Association violated section 3543.6(b) of the Educational Employment Relations Act. We have reviewed the dismissal and, finding it to be free of prejudicial error, adopt it as the Decision of the Board itself.

The unfair practice charge in Case No. LA-CO-416 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

By the BOARD

PUBLIC EMPLOYMENT RELATIONS BOARD

SACRAMENTO REGIONAL OFFICE
1031 18TH STREET, SUITE 102
SACRAMENTO, CALIFORNIA 95814
(916) 322-3198



November 19, 1987

Mr. George V. Mrvichin

RE: Mrvichin v. California School Employees Association.
Unfair Practice Charge No. LA-CO-416. First Amended Charge

Dear Mr. Mrvichin:

You have filed a charge against the California School Employees Association (CSEA) alleging that it violated the Educational Employment Relations Act (EERA) by failing to properly represent you in regard to grievances and unfair practice charges which you filed. Specifically, you assert that CSEA:

- (1) repeatedly refused to provide you assistance regarding numerous grievances you have filed against the employer;
- (2) refused to respond to your suggestions regarding the CSEA's bylaws, its constitution and its negotiations;
- (3) violated its own Policy 606 by referring your communications to the Grievance Committee to Field Representative Manuel Armas;
- (4) wrongly sent you a PERB Notice of Appearance showing that a CSEA attorney was representing you in an unfair practice charge against the District; and
- (5) engaged in collusion with the District against your interests.

You were informed by Jorge Leon's letter of October 6, 1987 (attached) that the above-referenced charge did not state a prima facie violation and would be dismissed if you did not either amend the charge or withdraw it by October 16, 1987. On October 21, 1987 you filed the first amended charge in this case which did not provide any additional information concerning the allegations contained in the original charge. For this reason, the allegations contained in the original charge as reiterated in the first amended charge are hereby dismissed based on the rationale contained in Mr. Leon's October 6, 1987 letter.

The first amended charge also focuses on CSEA's failure to provide representation for you during an informal conference on PERB Case Nos. LA-CE-2548 and LA-CE-2571. This informal conference was held on October 5, 1987 and both charges were withdrawn the following day. According to the first amended charge you entered a request concerning CSEA representation with Mr. Armas on September 18. You were informed by Mr. Armas in a phone call on or about October 1, 1987 that you would be receiving "future advisement" regarding the informal PERB hearing but that he would be there. The informal conference was held on October 5, with no one representing CSEA in attendance.

As stated in Mr. Leon's letter of October 6, 1987, in order to state a prima facie case of a union's failure to comply with its duty of fair representation, the charge must state facts which demonstrate that the exclusive representative has handled a matter in an arbitrary, discriminatory or in a bad faith manner. Under United Teachers of Los Angeles (Collins) (1983) PERB Decision No. 258 mere negligence or poor judgment in handling of a grievance does not constitute a breach of the union's duty. The first amended charge in this case does not state a prima facie violation of the duty of fair representation for two reasons. First, there are no facts alleged in the first amended charge which indicate that the failure to the CSEA representative to appear at the informal conference was the result of bad faith, discriminatory, or arbitrary conduct.

Second, there is no obligation on the part of the exclusive representative to provide representation for a member of the bargaining unit in extra-contractual matters not under its exclusive control. San Francisco Classroom Teachers' Association (Chestangue) (1985) PERB Decision No. 544; California State Employees' Association (Darzins) (1985) PERB Decision No. 546-S.

In Hawkins v. Babcock and Wilcox Co. (1980) (U.S. DC, N. Ohio) 105 LRRM 3458,¹ involving an employee who alleged that the union should have advised him regarding administrative and judicial remedies to alleged discriminatory conduct by his employer, the District court ruled:

The National Labor Relations Act,
authorizing unions to represent employees in

¹PERB has followed decisions of the federal courts and the National Labor Relations Board interpreting the National Labor Relations Act involving the duty of fair representation. Firefighters Union v. City of Vallejo (1974) 12 Cal.3d 608 [116 Cal.Rptr. 507]; and see SEIU. Local 99 (Kimmett) (1979) PERB Decision No. 106.

the creation and administration of collective bargaining agreements with employers, together with the correlative duty of fair representation, however, is limited to the collective bargaining agreement process. . . . The union's duty of fair representation is restricted to the context of the collective bargaining agreement and does not extend to legal remedies available outside of the employment context. See International Brotherhood of Electrical Workers v. Foust, 442 U.S. 42, 101 LRRM 2365 (1979); Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967); Humphrey v. Moore, 375 U.S. 335, 55 LRRM 2031 (1964); Ford Motor Co. v. Huffman, 345 U.S. 330, 331 LRRM 2548 (1952).

In the present case, the defendant union was not under any duty to advise the plaintiff of its legal rights outside the context of the collective bargaining agreement. The union had no duty to act as an attorney at law advising the plaintiff of all possible alternatives of legal recourse.

Similarly, a federal district court has stated:

In the typical fair representation case, it is asserted that the union has breached its duty to represent the employee fairly as regards a employment contract. However, in such cases it is expressly provided by law that the union shall be the exclusive representative of all the employees in the unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. . . . Thus, in the typical fair representation case, the union has the right, derived from law or from its constitution, to represent the employee exclusively in certain classes of cases. This right imposes a correlative duty to perform diligently the duties of its agency, and not to engage in conduct which is arbitrary, discriminatory or in bad faith. Vaca v. Sipes, supra. Such is not the case here.

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The statute provides that a petition **for** certification of eligibility to apply for adjustment assistance may be filed either by a group of employees or by their union. . . . Therefore, [the union] had no exclusive right, nor correlative duty to file on behalf of plaintiffs in their proposed class. Plaintiffs could have filed for themselves. Lacy v. Local 287. United Automobile. Aerospace, and Agricultural Implement Workers of America (1979) (U.S. DC, S. Dist. Ind.) 102 LRRM 2847. (Emphasis added.)

Based on this rationale and that contained in the October 6, 1987 letter these charges are hereby dismissed.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, 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 (California Administrative Code, title 8, section 32635(a)). To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing (section 32135). Code of Civil Procedure section 1013 shall apply. 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 copies of a statement in opposition within twenty 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.

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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 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.

Sincerely,

John Spittler
Acting General Counsel

By

Robert Thompson
Regional Attorney

Attachment

cc: Christine Bleuler

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PUBLIC EMPLOYMENT RELATIONS BOARD

SACRAMENTO REGIONAL OFFICE
1031 18TH STREET, SUITE 102
SACRAMENTO, CALIFORNIA 95814
(916) 322-3198



October 6, 1987

Mr. George V. Mrvichin

RE: Mrvichin v. California School Employees Association. Case
No. LA-CO-416

Dear Mr. Mrvichin:

You have filed a charge against the California School Employees Association (CSEA) alleging that it violated the Educational Employment Relations Act (EERA) by failing to properly represent you in regard to grievances and unfair practice charges which you filed. Specifically, you assert that CSEA: (1) repeatedly refused to provide you assistance regarding numerous grievances you have filed against the employer; (2) refused to respond to your suggestions regarding the CSEA's bylaws, its constitution and its negotiations; (3) violated its own Policy 606 by referring your communications to the Grievance Committee to Field Representative Manuel Armas; (4) wrongly sent you a PERB Notice of Appearance showing that a CSEA attorney was representing you in an unfair practice charge against the District; (5) engaged in collusion with the District against your interests.

My investigation revealed the following information. You are employed as an Athletic Trainer by the Chino Unified School District and have been so employed for some ten years. Your duties include training and conditioning student athletes in injury prevention, issuance of safety equipment to students and administering first aid. Between September 1986 and June 23, 1987, you filed some 50 grievances against the District alleging numerous contract violations. During that period you also filed two unfair practice charges against the District. Throughout this time, you have requested that the CSEA provide assistance in the resolution of both the grievances and the charges.

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1. Refusals to provide assistance with your grievances.

As of April, 1987, many of the grievances you filed had reached the third level pursuant to the contract grievance procedure. The CSEA local chapter had refused to pursue the grievances on your behalf because, according to CSEA representative Manuel Armas, the grievances did not "state valid claims." You appealed Armas' determinations pursuant to CSEA's Policy 606 and on April 15, 1987, the Grievance Committee upheld the refusal to pursue the grievances.

On April 28, 1987, you were "reprimanded, libeled, and slandered" by Mr. Reynoso, Assistant Principal at Chino High School, where you work. Later that day, Ms. Small, Classified Personnel Director, sent you a letter regarding a reclassification of your position. You advised Chapter President Mr. Warren about these matters. Mr. Warren said, "Don't worry." Also on this date, you filed an unfair practice charge against CSEA for failure to properly represent you (LA-CO-413).

On May 7 and 8 you reported further "harassment" and alleged contract violations by the District to Mr. Warren. On May 11, 13, and 14 you reported further alleged violations by the District.

On June 1, 1987, you sent a letter to Warren asking why he was failing to assist you with the alleged contract violations by District and why he was "acting as though Mr. Mrvichin had been expelled [sic] from the union."

On June 2, 1987, Mr. Warren came to your work area at about noon. He gave you papers which you had presented to CSEA, including copies of your grievances and said, "I want to talk to you." You told him you'd prefer to talk later. He said, "I want to talk to you now. I don't want to talk to you anymore. Here's your papers. From now on, go through Mr. Fields. I hope you get fired." Later that day, CSEA Representative Mr. Fields notified you that Mr. Armas would represent you in your grievances. On June 17, 1987, Mr. Armas notified you that he had reviewed your grievances filed to date and had determined that the grievances did not present contract violations.

2. Failure to Respond to your suggestions regarding the CSEA bylaws, constitution, and its negotiations.

On May 5, 1987, you sent Mr. Warren a letter making certain recommendations on upcoming negotiations with the District, and suggesting changes in the CSEA by-laws and constitution. To date, CSEA has not responded to your suggestions. On May 25, 1987 you sent Mr. Warren a letter suggesting a member "Bill of Rights."

3. Violation of CSEA Policy 606.

On May 6, 1987 you sent a grievance appeal to CSEA Director of Field Operations. The Director referred this matter to Manuel Armas, CSEA Field Representative. You allege that this referral to the Field Representative violates Policy 606. which provides, in part:

.1 General: Notwithstanding the provisions of Item 605, if a Chapter refuses to provide assistance and/or request state assistance for a member confronted by a disciplinary action from the district of employment or any adverse employment condition, the member may appeal the Chapter's refusal and request assistance from the State Association.

.....

.4 Action Upon Receipt of Appeal: The Director, Field Operations shall cause the matter to be thoroughly and immediately investigated by a Field Representative. The investigation by the concerned FR shall be conducted without delay and submitted to the DFO together with the conclusions and recommendations of the FR.

.....

.5 Determination After Investigation: The appeal and report of investigation will be submitted to the President and Executive Director for determination of a course of action. If time permits, the matter will be submitted to the Board of Directors for action. If time does not

permit Board consideration, the President and Executive Director will determine the course of action and cause it to be fully implemented. A report will then be rendered to the Board of Directors at its next meeting and a final report, if required, will ultimately be presented to the Board. The appellant and concerned Chapter President will be advised of the determined course of action.

4. Wrongly sending you a PERB Notice of Appearance.

On May 20, 1987, you received a PERB Notice of Appearance regarding LA-CO-413 which erroneously stated the title of the case. Rather than indicating "Mrvichin v. CSEA," the Notice stated, "CSEA #102 (George Mrvichin) v. Chino Unified School Dist." The notice indicated that Ms. Christine Bleuler would be representing CSEA in the matter. On approximately May 25, 1987, you sent Ms. Bleuler a letter asking that she explain the notice. On June 3, 1987, Ms. Bleuler sent you a letter advising you that the case name in the Notice was a mistake, and explaining that she was representing CSEA in the charge which you filed against the Association rather than representing you. She also sent a corrected Notice.

5. Engaging in collusion with the District against your interests.

On June 17, 1987, Mr. Armas provided you with a copy of a page from a charge which you had filed against the District (LA-CE-2571), a case to which you note the CSEA "is not a party." You allege that the fact that Armas had in his possession a copy of the charge demonstrates that there is some form of collusion between the District and the CSEA.

ANALYSIS

Charging Party has alleged that the exclusive representative denied Charging Party the right to fair representation guaranteed by EERA section 3544.9 and thereby violated section EERA 3543.6(b). The duty of fair representation imposed on the exclusive representative extends to grievance handling. Fremont Teachers Association (King) (1980) PERB Decision No. 125; United Teachers of Los Angeles (Collins) (1983) PERB Decision No. 258. In order to state a prima facie violation of this section of the EERA Charging Party must show that the

Association's conduct was arbitrary, discriminatory, or in bad faith. In United Teachers of Los Angeles (Collins), Id., the Public Employment Relations Board (PERB) stated:

Absent bad faith, discrimination, or arbitrary conduct, mere negligence or poor judgment in handling a grievance does not constitute a breach of the union's duty.

.

A union may exercise its discretion to determine how far to pursue a grievance in the employee's behalf as long as it does not arbitrarily ignore a meritorious grievance or process a grievance in a perfunctory fashion. A union is also not required to process an employee's grievance if the chances for success are minimal.

In order to state a prima facie case alleging arbitrary conduct violative of the duty of fair representation the Charging Party:

. . . must, at a minimum, include an assertion of sufficient facts from which it becomes apparent how or in what manner the exclusive representative's action or inaction was without a rationale basis or devoid of honest judgment. Reed District Teachers Association, CTA/NEA (Reyes) (1983) PERB Decision No. 332, citing Rocklin Teachers Professional Association (Romero) (1980) PERB Decision No. 124.

1. Refusals to provide assistance with your grievances.

The investigation disclosed that the CSEA refused to assist you in processing your grievances because they did not "state valid claims." The charge does not present and the investigation failed to yield any facts which would indicate that the CSEA refused to provide assistance in pursuing your grievances for arbitrary, discriminatory, or bad faith reasons. As noted above, a union is not required to process an employee's grievance if the chances for success are minimal. United Teachers of Los Angeles (Collins), supra. For these reasons, this allegation does not present a prima facie case of an EERA violation.

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Mr. Warren's alleged comments of June 2, 1987 to you that he did not wish to talk to you any more and that he hoped you would be fired appears to be an expression of personal sentiment. Standing alone, the statement does not rise to the level of arbitrary, bad faith, or discriminatory conduct, since there is no evidence that there was any effect on CSEA's actions regarding you or on your relationship with your employer. The charge does not present any information to demonstrate that Warren communicated his sentiment to any other person in the CSEA, that his comment otherwise led CSEA to fail to exercise its duties to you, or that it led CSEA to engage in arbitrary, bad faith, or discriminatory conduct toward you. For these reasons, this allegation does not present a prima facie case of an EERA violation.

2. Failure to respond to your suggestions regarding the CSEA Bylaws, constitution, and its negotiations.

In El Centro Elementary Teachers Association (1982) PERB Decision No. 232, the PERB noted that:

. . . the duty of fair representation implies some consideration of the views of various groups of employees and some access for communication of those views, but there is no requirement that formal procedures be established. (Id., p. 15-16.)

While the CSEA has a duty to consider the views of its members it does not have a specific obligation to respond to their suggestions. Its failure to respond to your suggestions, therefore, does not appear to violate any duty it has toward you. The charge does not present any other facts to demonstrate that CSEA engaged in bad faith, arbitrary, or discriminatory conduct in this matter. If its failure to respond to your comments can be characterized as negligent conduct, that is not enough to breach its duty. United Teachers of Los Angeles (Collins), supra.

3. Violation of CSEA Policy 606.

You assert that CSEA violated the policy when the Director of Field Operations referred your grievances appeal on May 6 back to Field Representative Manuel Armas. This procedure appears to be specifically permitted by section 606.4. Its action does not appear to violate any other provision of Policy 606,

therefore, this allegation does not present a prima facie case of a violation of the EERA.

4. Wrongly sending you a PERB Notice of Appearance.

You assert that CSEA sent you a Notice of Appearance form containing errors. The harm to you of this action **is** not clear. CSEA, through Ms. Bleuler corrected the errors within approximately five days of receiving your letter asking for an explanation. Its action does not appear to constitute discriminatory, bad faith, or arbitrary conduct. For these reasons, this allegation does not present a prima facie case of an EERA violation.

5. Engaging in collusion with the District against your interests.

Based on the fact that Mr. Armas revealed to you that he had in his possession a copy of a charge which you filed against the District and which you did not serve upon the CSEA, you assert that the CSEA must be in collusion with the District. First, there are no facts that indicate that Armas received the charge from the District. Assuming that he did, however, Charging Party has not cited an authority which requires the District to maintain the confidentiality of charges filed against it. To the contrary, charges filed with the PERB are considered public documents. Government Code section 6252 (d). As such, they are available for public inspection. Government Code section 6253. The District was under no obligation to maintain the secrecy of the charge. In light of the fact that as of the date of Mr. Armas' revelation, you had by then filed two charges against the District and one against the CSEA, it does not seem unusual that CSEA and the District would communicate about these matters. Furthermore, you had requested that CSEA assist you in pursuing the charges against the District. Other than the fact that CSEA had apparently gotten a copy of the charge from the District, the charge does not reveal that the CSEA has engaged in any collusive conduct with the District against your interests. For these reasons, this allegation does not state a prima facie case of an EERA violation.

For these reasons, the charge as presently written 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

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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 October 16, 1987, I shall dismiss your charge. If you have any questions on how to proceed, please call me at (916) 323-8015.

Sincerely,

Jorge A. Leon
Staff Attorney

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