STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

EARL W. BOYNTON, Charging Party, v. CALIFORNIA TEACHERS ASSOCIATION, CTA/NEA, Respondent.	)	Case No. S-CO-256 PERB Decision No. 906 October 1, 1991

Appearance: Earl W. Boynton, on his own behalf.

Before Shank, Camilli and Carlyle, Members.

DECISION

SHANK, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Earl W. Boynton (Boynton) of a Board agent's dismissal of his unfair practice charge. In his charge, Boynton alleged that the California Teachers Association, CTA/NEA (CTA) failed to rebate the 1989-90 agency fee in a timely manner. Boynton also alleged that CTA violated the Educational Employment Relations Act (EERA)[1] by not allowing him to file as an agency fee objector for 1990-91.

The Board agent determined that these allegations were insufficient to state a prima facie violation of EERA, and thus, dismissed the charge. The Board concurs with this determination for the reasons stated below.

[1]EERA is codified at Government Code section 3540 et seq.

FACTUAL SUMMARY

Boynton filed a request for rebate and/or arbitration of the 1989-90 agency fees in November 1989. An arbitration hearing was held in January 1990, and on June 5,[2] an arbitration decision was issued concerning the rebate of the 1989-90 agency fees. Subsequently, a dispute arose concerning the proper interpretation of the award. A settlement agreement was signed by the attorney for CTA on November 20, and by the attorney for the agency fee objectors on November 21. The 1989-90 rebate checks were mailed to agency fee objectors on November 20.

On October 15, CTA sent Boynton a notice of the right to receive a rebate and arbitration as an agency fee payer for 1990-91. The notice required that any request for rebate and/or arbitration of the 1990-91 agency fees unrelated to collective bargaining, must be postmarked on or before November 15. Boynton claimed that he mailed his request for a rebate on November 14 or 15, by placing it in a U.S. Postal Service mailbox. Thereafter, Boynton received a letter from CTA dated December 7, notifying him that CTA would not honor his request. CTA stated that Boynton had not met the postmark requirement as his letter was postmarked November 19.

DISCUSSION

Boynton asserts that the 1989-90 agency fee arbitration decision was issued on June 5, and thus receiving the agency fee

[2]Unless otherwise noted, all dates refer to 1990.

rebate check on or about November 20 constituted a failure on the part of CTA to refund the agency fees in a timely manner.

However, subsequent to the arbitrator's decision, a dispute arose concerning the proper interpretation of the final award. A settlement agreement was completed on November 20, and rebate checks, which included interest for the period the rebate was withheld, were issued the same day. In consideration of the fact that rebate checks were mailed the day the settlement agreement was signed, it appears the 1989-90 agency fee rebate checks were issued on a timely basis.

Boynton further alleged that CTA's rejection of his rebate request as untimely was improper, as he placed his request in a mailbox on November 14 or 15. CTA rejected his request because Boynton failed to meet the November 15 postmark requirement. On appeal, Boynton argues that because he has no control over the operations of the postal service, and because he "complied with the spirit of the regulations" he should not be penalized on the basis of a "mere technicality."

PERB has enacted agency fee regulations to guide employee organizations in administering agency fee agreements. PERB Regulation section 32994[3] states in relevant part:

> (b) Each exclusive representative that has an agency fee provision shall administer an Agency Fee Appeal Procedure in accordance with the following:
>
> . . .

[3]PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

(2) An agency fee objection shall be filed not later than 30 days following distribution of the notice required under section 32992 of these regulations.

In compliance with PERB regulations, CTA notified Boynton on October 15, of the right to request a rebate of the 1990-91 agency fees. CTA required that any agency fee refund requests be postmarked by November 15. Boynton's letter requesting a rebate was postmarked November 19.

Because Boynton has not presented any evidence which would support a finding that his agency fee rebate request was postmarked by the necessary date, the charge must be dismissed.

ORDER

The unfair practice charge in Case No. S-CO-256 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Camilli and Carlyle joined in this Decision.