

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



DONNA SIMMS,)
)
 Charging Party,) Case No. LA-CO-581
)
 v.) PERB Decision No. 932
)
 UNITED TEACHERS-LOS ANGELES,) May 15, 1992
)
 Respondent.)
 _____)

Appearance: Donna Simms, on her own behalf.
Before Camilli, Caffrey, and Carlyle, Members.

DECISION AND ORDER

CAFFREY, Member: This case is before the Public Employment Relations Board (Board) on appeal by Donna Simms of a Board agent's dismissal (attached hereto) of her charge that the United Teachers-Los Angeles failed to adequately represent her in violation of section 3543.6(b) of the Educational Employment Relations Act (EERA).¹

¹EERA is codified at Government Code section 3540 et seq. Section 3543.6(b) 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.

The Board has reviewed the Board agent's warning and dismissal letters, and finding them to be free of prejudicial error, adopts them as the decision of the Board itself.

The original and amended unfair practice charge in Case No. LA-CO-581 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Camilli and Carlyle joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
3530 Wilshire Boulevard, Suite 650
Los Angeles, CA 90010-2334
(213) 736-3127



March 3, 1992

Donna Simms

Re: DISMISSAL AND REFUSAL TO ISSUE COMPLAINT
Unfair Practice Charge No. LA-CO-581
Donna Simms v. United Teachers-Los Angeles

Dear Ms. Simms: _____

I indicated to you in my attached letter dated February 10, 1992, that the above-referenced charge did not state a prima facie case. You were advised that if there were any factual inaccuracies or additional facts that would correct the deficiencies explained in that letter, you should amend the charge accordingly. You were further advised that unless you amended the charge to state a prima facie case, or withdrew it prior to February 18, 1992, the charge would be dismissed. I later extended the deadline to February 26, 1992, and finally to March 2, 1992.

On March 2, 1992, you filed an amended charge. The only significant new factual allegation is that UTLA Attorney Carl Joseph made "sexually-harassing jokes about women" at a workshop attended by a male teacher of your acquaintance. This alleged fact still does not show that sexism or any other impermissible motive was the cause of the alleged defects in UTLA's representation of you. I am therefore dismissing the charge based on the facts and reasons contained in this letter and in my February 10 letter.

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 Code of Regulations, 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 (California Administrative Code, title 8, section 32135). Code of Civil Procedure section 1013 shall apply. The Board's address is:

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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 (California Code of Regs., tit. 8, sec. 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 California Code of Regs., tit. 8, sec. 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 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 (California Code of Regs., tit. 8, sec. 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 W. SPITTLER
General Counsel

By

THOMAS J. ALLEN
Regional Attorney

Attachment

cc: Jesus E. Quinones

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Boulevard, Suite 650
Los Angeles, CA 90010-2334
(213) 736-3127



February 10, 1992

Donna Simms

Re: WARNING LETTER, Unfair Practice Charge No. LA-CO-581,
Donna Simms v. United Teachers-Los Angeles

Dear Ms. Simms:

In the above-referenced charge, you allege that United Teachers-Los Angeles (UTLA) denied you the right of fair representation guaranteed by Government Code section 3544.9 of the Educational Employment Relations Act (EERA). This conduct is alleged to violate Government Code section 3543.6(b) of the EERA.

My investigation of the charge reveals the following facts.

You were employed by the Los Angeles Unified School District as a substitute teacher, in a bargaining unit for which UTLA is the exclusive representative. On December 8, 1989, you were issued an Inadequate Service Report for Day-to-Day Substitute Teacher. You filed a grievance challenging the Report, which UTLA took to arbitration. At the arbitration hearing on March 28, 1991, you were represented by UTLA Attorney Carl Joseph and his assistant Paula Parr. The arbitrator decided against you.

On July 12, 1991, you wrote to UTLA, requesting that UTLA ask the arbitrator to reopen the hearing. You told UTLA that you felt Joseph did not fairly represent you in the following respects: he did not present "important evidence"; he did not meet with you before the hearing and did not "properly prepare"; he "drastically reduced the terms" of the grievance; he "improperly questioned" you; and he "refused to file a Written Brief" as the District did. You also told UTLA that Joseph suggested to you on the telephone that you wear "black stockings and garters to the Arbitration, so that he would be 'psyched-up'." UTLA responded in a letter dated July 19, 1991, offering "an explanation of why certain actions were and were not taken" and concluding that "it is UTLA's position that your arbitration was handled in a competent manner." You allege that UTLA's response was "non-factual" and did not address all of the questions you raised.

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Based on the facts stated above, the charge does not state a prima facie violation of the EERA, for the reasons that follow.

You have alleged that UTLA, as exclusive representative, denied you 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, a Charging Party must show that the exclusive representative'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.

In order to state a prima facie case of arbitrary conduct violating the duty of fair representation, a 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 rational 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.

It is not apparent from the charge how UTLA's conduct was without a rational basis, devoid of honest judgment, discriminatory or in bad faith. At worst, it may appear that UTLA was negligent or exercised poor judgment, but such conduct would not violate the EERA. UTLA Attorney Joseph's alleged suggestion that you wear "black stockings and garters" may have been, as you state, "inappropriate, sexist, and insulting," but there are no alleged facts that show that sexism or any other impermissible motive was the cause of the alleged defects in UTLA's representation of you.

For these reasons, the charge as presently written does not state a prima facie case. If there are any factual inaccuracies in this letter or any additional facts that would correct the

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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 must 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 February 18, 1992, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3127.

Sincerely,

Thomas J. Allen
Regional Attorney