

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ANNETTE M. DEGLOW,)
)
Charging Party,) Case No. S-CO-279
)
v.) PERB Decision No. 950
)
LOS RIOS COLLEGE FEDERATION OF)
TEACHERS, LOCAL 2279, CFT/AFT,)
)
Respondent.)
_____)

Appearances: Annette M. Deglow, on her own behalf; Robert J. Bezemek, Attorney, for Los Rios College Federation of Teachers, Local 2279, CFT/AFT.

Before Hesse, Chairperson; Camilli and Carlyle, Members.

DECISION AND ORDER

HESSE, Chairperson: This case is before the Public Employment Relations Board (Board) on appeal by Annette M. Deglow of a Board agent's dismissal (attached hereto) of her charge that the Los Rios College Federation of Teachers, Local 2279, CFT/AFT violated section 3543.6(b) of the Educational Employment Relations Act (EERA)¹ and violated its duty of fair representation under section 3544.9 of the EERA, as enforced under section 3543.6(b). We have reviewed the dismissal and, finding it to be free of prejudicial error, adopt it as the decision of the Board itself.

¹EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

The unfair practice charge in Case No. S-CO-279 is hereby
DISMISSED WITHOUT LEAVE TO AMEND.

Members Camilli and Carlyle joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916) 322-3198



June 24, 1992

Annette Deglow

Re: Annette Deglow v. Los Rios College Federation of Teachers.
Local 2279. CFT/AFT. Unfair Practice Charge S-CO-279
DISMISSAL LETTER

Dear Ms. Deglow:

On January 23, 1992, you filed the above-referenced charge alleging violations of Government Code sections 3543, 3543.6(a)-(d) and 3544.9. Specifically, you allege that the Los Rios College Federation of Teachers has denied your right to an agency fee determination hearing.

On June 22, 1992, you submitted an amended charge. In the amendment you allege that you have "not taken receipt of any fair share refunds" (apparently you have not cashed the checks sent by the union), that the union's fee payer notice requires agency fee collection and provides you with a fee determination hearing, that current case law supports your demand for a hearing, that the union's return of the fee "causes [you] by Federation definition to be identified as a 'Free-loader,'" that the union's refusal to accept your agency fee is "unfair to all unit members" and that your rights under the Educational Employment Relations Act (EERA) have been violated.

The amended charge primarily sets forth further argument and reasoning to support your original contention that the union's procedure which includes escrowing your funds, refusal to collect your agency fee and denial of an agency fee hearing violate your rights under EERA. However, no facts have been submitted which would change the reasoning or deficiencies explained in my letter of June 12, 1992. Accordingly, the charge must be 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

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after service of this dismissal. (Cal. Code of Regs., tit. 8, sec. 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 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. (Cal. Code of Regs., tit. 8, sec. 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 (20) calendar days following the date of service of the appeal. (Cal. 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 Cal. 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 (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. (Cal. Code of Regs., tit. 8, sec. 32132.)

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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
Bernard McMonigle
Regional Attorney

Attachment

cc: Robert J. Bezemek

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916) 322-3198



June 12, 1992

Annette Deglow

Re: Annette Deglow v. Los Rios College Federation of Teachers,
Local 2279. CFT/AFT. Unfair Practice Charge S-CO-279

WARNING LETTER

Dear Ms. Deglow:

On January 23, 1992, you filed the above-referenced charge alleging violations of Government Code sections 3543, 3543.6(a)-(d) and 3544.9. Specifically, you allege that the Los Rios College Federation of Teachers has denied your right to an agency fee determination hearing.

Your charge reveals the following. You are an instructor for the Los Rios Community College District and a member of the certificated employee bargaining unit which is represented by the Los Rios College Federation of Teachers (LRCFT). The current collective bargaining agreement between the District and the LRCFT includes an agency fee provision. In August 1991 the LRCFT sent a letter to all nonmembers which stated in part, "Non-members who wish to challenge LRCFT, Local #2279's calculation of the nonchargeable amount must inform LRCFT, Local #2279 of their challenge within thirty (30) days after the date of notice." On September 14, 1991, you requested a dues reduction. On September 30, 1991, you amended your request to include a challenge to the amount being withheld for agency fee. Your October 1, 1991, pay warrant reflected a deduction of \$8.82 to the LRCFT. Your November 1, 1991, pay warrant reflected an agency fee of \$9.80. In a letter dated October 10, 1991, you were notified by the LRCFT that the union was returning your fee and denying your request to proceed to arbitration regarding your challenge to the amount of agency fee. On October 26, 1991, you joined 15 other unit members in a letter to LRCFT which declined the union's offer to not collect an agency fee during the 1991-92 school year and demanded an agency fee determination hearing.

Investigation reveals that the LRCFT has a fair share fee procedure which provides in part that the union establish an interest-bearing escrow account in which it deposits all fees of

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all nonmembers received within 30 days of the notice of a fee determination. The procedures provide that during the pendency of appeals the union shall continue to place in escrow all fees collected from nonmembers who have filed appeals. On October 24, 1991, the LRCFT sent you a check for \$8.82, the amount which had been escrowed from your first agency fee deduction. On or about November 20, 1991, shortly after receiving the agency fee deduction of November 1 from the District, the union refunded the amount of \$9.80 to you. No further agency fees were collected.

Bradley G. Booth. Suzanne M. Ambrose v. Association of California State Attorneys and Administrative Law Judges. Unfair Practice Case No. S-CO-110-S, presented similar issues to those which you have set forth in this case. In that case, two nonmembers objected to the allocation of chargeable and nonchargeable expenses. The individuals sought arbitration to challenge the agency fee amount established by the labor organization. The union responded by notifying the two individuals that they were relieved of any fair share assessment for the fee payer year. Those amounts which had been wrongfully deducted for one month were immediately refunded with interest. The remaining fees for the year were waived. The union denied the requests for arbitration. The two nonmembers filed an unfair practice charge alleging that the union was required to provide arbitration and could not evade that duty by waiving collection. The administrative law judge (ALJ) determined that the charging parties had no right to a hearing and dismissed the case. The ALJ stated in part,

While Hudson sets forth certain procedural guarantees, it does so for the purpose of preventing the exclusive representative's wrongful use of the agency fees. Here, the exclusive representative has not used the agency fees. Abood and its progeny have, as a common basis, the fact that the exclusive representative was entitled to, and did use agency fees for various chargeable purposes. Hudson provides a constitutional framework for the agency fee-payer to challenge the union's use of agency fees.¹

The ALJ also determined that, because the fees had been returned, there was no real remedy that PERB could afford the charging

¹In the above quotation, "Hudson" refers to Chicago Teachers Association v. Hudson (1986) 475 U.S. 292. "Abood" refers to Abood v. Detroit Board of Education (1977) 431 U.S. 209.

parties that they had not already received. As the ALJ stated, "since the charging parties in this case have suffered no harm, nor do they have any potential for any harm, they have no standing to challenge the union's refusal to provide them with arbitration." Accordingly, the ALJ granted the union's motion to dismiss.²

Because it is an ALJ decision and not a decision of the Board, the ALJ's dismissal in Booth, Ambrose v. ACSA is not PERB precedent. However, the facts are very similar to the facts presented in your charge and the ALJ's reasoning is persuasive. The right protected by the Educational Employment Relations Act and the U.S. Supreme Court's Hudson decision is the "right to prevent the use of his or her service fee for purposes beyond the union's representational obligations." Cumero v. Public Employment Relations Board (1989) 49 Cal.3d 575, 590.³ You have provided no facts demonstrating that the right to prevent use has been violated. By providing for escrow of funds collected and/or immediately returning those monies, that right is protected and the union need not provide an arbitration hearing.

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 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,

²The nonmember employees did not appeal the dismissal to the Board.

³The right to be protected is the right to prevent the use of nonmember funds for improper purposes. (Jerabek v. California Public Employment Relations Board (1991) 2 Cal.App.4 1298 (pet. writ cert, pending U.S. Supreme Ct.)). In Jerabek, the court determined that placing agency fees in escrow during the objections period eliminated the risk that nonmember contributions would be even temporarily used for impermissible purposes. As the court stated,

At no time does a union have access to these funds to use them for political, ideological, or other non-representational purposes. Consequently, the evil discussed in Abood, Ellis, and Hudson, the involuntary subsidization of ideological activity, is not implicated.

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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 **June 22, 1992**, I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198.

Sincerely,

Bernard McMonigle
Regional Attorney

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