

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SHIRLEY A. JANSSEN,)	
)	
Charging Party,)	Case No. LA-CO-606
)	
v.)	PERB Decision No. 1017
)	
VICTOR ELEMENTARY TEACHERS)	October 8, 1993
ASSOCIATION,)	
)	
Respondent.)	

Appearance; Shirley A. Janssen, on her own behalf.
Before Blair, Chair; Hesse and Caffrey, Members.

DECISION

CAFFREY, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Shirley A. Janssen (Janssen) of a Board agent's dismissal (attached) of her unfair practice charge. In her charge, Janssen alleged that the Victor Elementary Teachers Association denied her the right to fair representation guaranteed by the Educational Employment Relations Act (EERA) section 3544.9 and thereby violated EERA section 3543.6(b).¹

¹EERA is codified at Government Code section 3540 et seq. Section 3544.9 states:

The employee organization recognized or certified as the exclusive representative for the purpose of meeting and negotiating shall fairly represent each and every employee in the appropriate unit.

Section 3543.6 states, in pertinent part:

It shall be unlawful for an employee organization to:

The Board has reviewed the entire record in this case, including the warning and dismissal letters, the unfair practice charge and Janssen's appeal. The Board finds the Board agent's dismissal to be free of prejudicial error and adopts it as the decision of the Board itself.

DISCUSSION

Janssen indicates in her appeal that she failed to amend her charge after the Board agent issued the warning letter because her representative failed to inform her of the Board agent's warning letter. Janssen then responds to specific elements of the Board agent's warning letter and provides additional factual information in support of her original charge.

PERB Regulation 32635² states, in pertinent part:

Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence.

In accordance with normal PERB procedures, Janssen filed a "Notice of Appearance Form" with her charge in February 1993. With that form, Janssen designated the representative she authorized to appear on her behalf in this proceeding. The failure of Janssen and her formally designated representative to communicate in an effective and timely manner does not constitute

(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.

²PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

good cause under PERB Regulation 32635(b). Therefore, Janssen may not present new allegations or evidence on appeal, and her charge must be dismissed.

ORDER

The unfair practice charge in case No. LA-CO-606 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chair Blair and Member Hesse joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



April 29, 1993

Sol I. Pavlosky
Koppel and Associates
16130 Kokanee Road
Apple Valley, California 92307

Re: DISMISSAL AND REFUSAL TO ISSUE COMPLAINT, Unfair Practice
Charge No. LA-CO-606, Shirley A. Janssen v. Victor
Elementary Teachers Association

Dear Mr. Pavlosky:

In the above-referenced charge, filed on February 16, 1993, employee Shirley A. Janssen alleges that the Victor Elementary Teachers Association (Association) denied her membership and the right to fair representation. This conduct is alleged to violate Government Code section 3543.6(b) of the Educational Employment Relations Act (EERA).

I indicated to you, in my attached letter dated April 16, 1993, that the above-referenced charge did not state a prima facie case within the jurisdiction of the Public Employment Relations Board. You were advised that, if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to April 26, 1993, the charge would be dismissed.

I have not received either an amended charge or a request for withdrawal. Therefore, I am dismissing the charge based on the facts and reasons contained in my April 16 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. (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

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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.)

PUBLIC EMPLOYMENT RELATIONS BOARD



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3530 Wilshire Blvd., Suite 650
Los Angeles, CA 90010-2334
(213) 736-3127



April 16, 1993

Sol I. Pavlosky
Koppel and Associates
16130 Kokanee Road
Apple Valley, California 92307

Re: WARNING LETTER, Unfair Practice Charge No. LA-CO-606,
Shirley A. Janssen v. Victor Elementary Teachers Association

Dear Mr. Pavlosky:

In the above-referenced charge, filed on February 16, 1993, employee Shirley A. Janssen alleges that the Victor Elementary Teachers Association (Association) denied her membership and the right to fair representation. This conduct is alleged to violate Government Code section 3543.6(b) of the Educational Employment Relations Act (EERA).

My investigation of the charge reveals the following facts.

Until June 16, 1992, Janssen was employed by the Victor Elementary School District (District) as a probationary employee, in a bargaining unit for which the Association is the exclusive representative. The collective bargaining agreement between the District and the Association does not appear to address the reemployment of probationary employees; Article III, Section C.2.b(6)(b)2., specifically states that a grievance arbitrator "shall have no power or authority to recommend or resolve" the "failure to reemploy a probationary employees." Under Article III, Section C.2.a, a grievance must be filed within 20 work days of the grievable event. Under Article III, Section A, the grievance procedure does not apply to Affirmative Action matters, for which there is a separate procedure.

On March 4, 1992, the District decided not to reemploy Janssen. Prior to that decision, the Association allegedly failed to represent Janssen and "conveyed an evasive, deceptive and ambiguous motive." During the week after the decision, Association staff person Bill Riblet allegedly told Janssen that she was "out" and that she "may as well begin applying at other Districts."

Also on March 4, 1992, Janssen applied for membership in the Association, but dues were not deducted. Janssen inquired about

this at the District office on April 10, 1992, and learned that no authorization had been received. Janssen's employment with the District ended on June 16, 1992. Apparently her Association membership application was nonetheless submitted during the summer, since she did receive the September and October issues of Association publications.

Janssen met during the summer with Association Vice President Barbara Dew. Janssen sought and eventually obtained copies of the District's seniority list and Affirmative Action policy and procedures. On October 17, 1993, Janssen met with Dew and Association President David Hunter, but nothing happened as a result of this meeting.

Sometime during Janssen's employment by the District she received an evaluation that allegedly violated the collective bargaining agreement, but no grievance was filed challenging the evaluation. Janssen filed her unfair practice charge on February 16, 1993, eight months after the end of her employment.

Based on the facts stated above, the charge does not state a prima facie violation of the EERA within the jurisdiction of the Public Employment Relations Board (PERB), for the reasons that follow.

Charging Party Janssen has alleged that the Association, as exclusive representative, denied Charging Party the right to fair representation guaranteed by EERA section 3544.9 and thereby violated section 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), the Public Employment Relations Board 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.
[Citations.]

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 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. (Emphasis added.)" [Reed District Teachers Association, CTA/NEA (Reyes), (1983) PERB Decision No. 332, p. 9, citing Rocklin Teachers Professional Association (Romero), (1980) PERB Decision No. 124.]

Government Code section 3541.5(a(1)) states that PERB "shall not . . . [i]ssue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." Because the present charge was filed on February 16, 1993, only alleged unfair practices occurring on or after August 16, 1992, are within PERB's jurisdiction.

The only event alleged in the charge to have taken place on or after August 16, 1992, was Janssen's meeting with Association officers Dew and Hunter on October 17, 1992. Nothing happened as a result of that meeting, and it is not apparent how the Association's inaction at that point was without a rational basis, devoid of honest judgment, discriminatory, or in bad faith. By then, Janssen had not been a District employee or a member of the bargaining unit for four months. The time for filing a grievance with regard to any grievable event during Janssen's employment had expired without the filing of a grievance, so there was no grievance handling for the Association to do.¹ In fact, it is not apparent that there is anything significant that the Association could have done for Janssen after the District's decision not to reemploy her -- a decision made on March 4, 1992, more than eleven months before the charge was filed. Furthermore, the Association's alleged refusal of Janssen's request for membership apparently occurred and was known to Janssen by April 10, 1992, more than ten months before the charge was filed.

¹The one grievable event appears to have been the evaluation that allegedly violated the collective bargaining agreement.

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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 additional facts which would correct the deficiencies explained above, please amend the charge. 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 April 26, 1993, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3127.

Sincerely,

Thomas J. Allen
Regional Attorney