

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ISMAEL T. CHACON,)
)
 Charging Party,) Case No. LA-CO-643
)
 v.) PERB Decision No. 1108
)
 CALIFORNIA SCHOOL EMPLOYEES) May 25, 1995
 ASSOCIATION AND ITS CHAPTER 107,)
)
 Respondent.)
 _____)

Appearance: Ismael T. Chacon, on his own behalf.

Before Carlyle, Johnson and Caffrey, Members.

DECISION AND ORDER

JOHNSON, Member: This case is before the Public Employment Relations Board (Board) on appeal by Ismael T. Chacon (Chacon) of a Board agent's dismissal (attached) of his unfair practice charge. In his charge, Chacon alleged that the California School Employees Association and its Chapter 107 violated his right to fair representation guaranteed by section 3544.9 of the Educational Employment Relations Act (EERA),¹ and violated section 3543.6(b)² by failing to fairly represent him with

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

²EERA section 3543.6 states, in pertinent part:

respect to the El Rancho Unified School District's hiring of substitute employees in certain job positions.

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

The unfair practice charge in Case No. LA-CO-643 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Carlyle and Caffrey joined in this Decision.

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.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



January 31, 1995

Ismael T. Chacon

Re: DISMISSAL AND REFUSAL TO ISSUE COMPLAINT, Unfair Practice
Charge No. LA-CO-643, Ismael T. Chacon v. California School
Employees Association and its Chapter 107

Dear Mr. Chacon:

In the above-referenced charge, you allege that the California School Employees Association and its Chapter 107 (CSEA) denied you the right to fair representation, in violation of the Educational Employment Relations Act (EERA).

I indicated to you, in my attached letter dated January 19, 1995, 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 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 January 26, 1995, the charge would be dismissed. I later extended the deadline to January 30, 1995.

On January 31, 1995, I received from you an amended charge. The amended charge still does not allege facts, however, from which it appears that CSEA's conduct was arbitrary, discriminatory or in bad faith. I am therefore dismissing the charge for the reasons contained in my January 19 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 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

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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.)

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

ROBERT THOMPSON
Deputy General Counsel

By
THOMAS J. ALLEN
Regional Attorney

Attachment

cc: Arnie R. Braafladt, Staff Attorney

PUBLIC EMPLOYMENT RELATIONS BOARD



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



January 19, 1995

Ismael T. Chacon

Re: WARNING LETTER, Unfair Practice Charge No. LA-CO-643,
Ismael T. Chacon v. California School Employees Association
and its Chapter 107

Dear Mr. Chacon:

In the above-referenced charge, you allege that the California School Employees Association and its Chapter 107 (CSEA) denied you the right to fair representation, in violation of the Educational Employment Relations Act (EERA).

My investigation of the charge reveals the following relevant facts.

You are employed by the El Rancho Unified School District (District) in a unit for which CSEA is the exclusive representative. In your charge, filed on October 14, 1994, you allege that in May 1994 you became aware of certain positions which, with CSEA's agreement, were filled without being posted. On May 25, 1994, you attended a meeting that included District Personnel Director Al Ogas, CSEA Representative Sol Allen, and CSEA members Lupe Marquez and Dina Navarro. At your request, Sol Allen later provided the following summary of the discussion that took place:

We discussed, again, the concerns you [Ismael Chacon] and Lupe [Marquez] had expressed about the way in which Sam Serrano, Gil Baca, Bill Gow and Ron Rulison were "promoted" into higher-paying positions. Al Ogas went through the circumstances, starting with the promotion of Ron Sherman, which created a "domino effect" as Gil Baca was placed in Ron's former position, Sam Serrano in Gil's former slot, and so on. Al explained that all this had occurred by directives from John Sherman, the former superintendent, and I explained how, after these individuals had been ordered to work out-of-class for over 18 months, CSEA brought the issue to the negotiations table as a potential complaint/grievance accusing the district of

violating their right to receive equal pay for equal work, and how, to resolve CSEA's complaint, the district agreed to reclassify Mesrs. [sic] Serrano, Gow and Rulison to the appropriate higher-level positions recognizing the fact that they had worked in the higher-level positions long enough to have passed a probationary period by then, and had been doing so without receiving a single dime more for their efforts. I am sure you would agree that this was a just and fair way to compensate them for their efforts.

Lupe asked if Ron Rulison had ever passed a test for Maintenance Worker III. Al Ogas explained that, as Ron had been working out-of-class as a Maintenance Worker II for over 18 months already, a fact which the district had already acknowledged, essentially Ron had demonstrated through performing the duties of a Maint. Worker II sufficient competence which would mean no test would be given. Also, it is important to note that this issue was most unusual, as it arose from all three unit members being forced to work out-of-class and a grievance created by the district's actions which CSEA moved to resolve at the bargaining table.

Al Ogas assured us that the district had changed its methods to prevent a reoccurrence of these circumstances in the future, and then explained the usual process for filling vacancies, per the contract provision.

Al Ogas also responded to Lupe's and your questions about the limits on the use of substitutes in general, and that the district and CSEA were in contact on limiting use of substitutes as provided by Education Code Section 45103 (refer to copies sent to Lupe of this law by Labor Relations Representative Danny Torres of the Rancho Cucamonga Field Office on July 6, 1994).

Al also indicated that John Dominguez, Jr. was a substitute who has filled in for temporary vacancies of permanent unit members in the warehouse as a custodian and has not

exceeded 195 days of service; Al went on to say that the district was making sure to "break" service of all of its substitutes so as not to violate Section 45103 of the Ed. Code.

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

As Charging Party, you allege that CSEA, as exclusive representative, denied you 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 and negotiations. (Fremont Teachers Association (King) (1980) PERB Decision No. 125; United Teachers of Los Angeles (Collins) (1982) PERB Decision No. 258.) In order to state a prima facie violation of this section of 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), 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.

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, p. 9, citing Rocklin Teachers Professional Association (Romero) (1980) PERB Decision No. 124.]

An exclusive representative is not expected or required to satisfy all members of the unit it represents, and the duty of fair representative "does not mean that [an exclusive representative] is barred from making contracts which may have unfavorable effects on some members." Steele v. Louisville & N.R.R. (1944) 323 U.S. 192 [15 LRRM 708, 712], quoted in Redlands Teachers Association (1978) PERB Decision No. 72.

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It is apparent that you feel that CSEA's agreement with the District had unfavorable effects on you. It does not appear from the charge, however, that CSEA's conduct was arbitrary, discriminatory or in bad faith. As noted above, even poor judgment on CSEA's part would not be enough to establish a violation of its statutory duty.

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 January 26, 1995, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3542.

Sincerely,

✓
Thomas J. Allen
Regional Attorney