

union newspaper. After investigation, the Board agent dismissed the charges for failure to establish a prima facie case.

The Board has reviewed the entire record in this case, including the original and amended unfair practice charges, the warning and dismissal letters, Deglow's appeal, and the Federation's response. The Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself consistent with the following discussion.

DISCUSSION

The Federation requests PERB to award litigation expenses, claiming that it has spent significant resources defending itself against Deglow's numerous charges. In two recent cases, the Board strongly cautioned Deglow that the repeated pursuit of similar charges based on essentially the same circumstances may constitute an abuse of process. (See Los Rios College Federation of Teachers (Deglow) (1996) PERB Decision No. 1133 and Los Rios College Federation of Teachers. CFT/AFT Local 2279 (Deglow) (1996) PERB Decision No. 1137.) The Board declines to sanction Deglow in this case primarily because the warnings in PERB

EERA section 3543.6 states, 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.

Decision No. 1133 and PERB Decision No. 1137 were recently- issued, after the unfair practice charges in the present case had been filed.

The Board hereby reaffirms the warnings in those cases and wishes to remind Deglow that the Board will award attorneys' fees and costs where a case is without arguable merit, frivolous, vexatious, dilatory, pursued in bad faith or is otherwise an abuse of process. (Chula Vista City School District (1990) PERB Decision No. 834; United Professors of California (Watts) (1984) PERB Decision No. 398-H.) The frequency and number of unsuccessful charges Deglow has filed at PERB indicate that she is approaching the standard in the cited cases whereby sanctions are appropriate.

ORDER

The unfair practice charges in Case Nos. S-CO-348, S-CO-352 and S-CO-355 are hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Garcia joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



September 29, 1995

Annette M. Deglow

Re: Annette Deglow v. Los Rios College Federation of Teachers
Unfair Practice Charge Nos. S-CO-348; S-CO-352; S-CO-355
DISMISSAL LETTER

Dear Ms. Deglow:

I indicated to you, in my attached letter dated July 24, 1995, that the above-referenced charges 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 charges. You were further advised that, unless you amended the charges to state a prima facie case or withdrew them prior to July 31, 1995, the charge would be dismissed.

On August 4, 1995, I received your amended charges. The amended charges reiterate your position that the articles published by the Los Rios College Federation of Teachers (LRCFT) demonstrated animosity toward you and had a substantial adverse impact on your relationships at your workplace. However, for the reasons given in my letter of July 24, 1995 there are no facts which demonstrate that the LRCFT has violated its duty of fair representation nor committed acts of illegal reprisal or interference with your rights under the Educational Employment Relations Act. Therefore, I am dismissing the charge based on the facts and reasons contained in my July 24, 1995 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:

Attention: Appeals Assistant
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.)

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

Bernard McMonigle
Regional Attorney

Attachment

cc: Robert Perone

PUBLIC EMPLOYMENT RELATIONS BOARD



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



July 24, 1995

Annette Deglow

Re: Annette Deglow v. Los Rios College Federation of Teachers
Unfair Practice Charge Nos. S-CO-348; S-CO-352; S-CO-355
WARNING LETTER

Dear Ms. Deglow:

On May 25, June 26, and July 3, 1995, you filed the above-referenced charges alleging that the Los Rios College Federation of Teachers (LRCFT) violated its duty to fairly represent you.

All three of the above charges regard articles in the LRCFT publication "The Union News." The first charge alleges that in the December 1994 edition, you were discredited when it was reported "that Deglow has repeatedly filed unsuccessful, non-meritorious and untimely unfair practice charges against the LRCFT." You allege the Federation's reporting was not honest, rational or in good faith.

The February 1995 publication of The Union News published a summary of a grievance that you had filed. That summary referred to "a part-time tenured instructor who had been given a 'needs improvement' evaluation in the Spring 1994 semester period." You contend that while the article does not reference you by name, the article pointed the finger at all part-time tenured instructors, including yourself, and thus questioned your professional competency. You contend that the Federation was aware that making your grievance public would enhance the hostility felt by you within your work place and make it more difficult "to meet your employment responsibilities." You had previously advised the Federation that you did not want your grievances made public. You state that the publication of your grievance was in direct conflict with the Federation's advertised policy of discussing grievances in the publication only with permission of the grievants.

The April 1995 edition of the LRCFT publication contained an article entitled "The Verdict Is In" and described "Union triumphant in Deglow v. LRCFT and in Elmer (John Sander) et al., v. LRCFT." You believe that you were unfairly singled out in the publication and that it was an attempt to discourage you from

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further exercises of protected activity. You contend that the publication was "distorted, and not in good faith." Government Code section 3544.9 requires that an exclusive representative "for the purpose of meeting and negotiating shall fairly represent each and every employee in the appropriate unit." Accordingly, PERB has held that the duty of fair representation attaches during contract negotiations (Los Angeles Unified School District (1986) PERB Dec. No. 599) and during grievance handling and contract administration. (Rocklin Teachers Professional Association (1980) PERB Dec. No. 124.) However, internal union affairs are largely immune from scrutiny under the duty of fair representation analysis. In SEIU Local 99 (Kimmett) (1979) PERB Dec. No. 106 the Board determined that the fair representation duty found in Government Code section 3544.9 "contains no language indicating that the legislature intended that section to apply to internal union activities that did not have a substantial impact on the relationships of unit members to their employers." Because these statements do not appear to have a substantial impact on your relationship to your employer, these allegations do not state a prima facie violation of EERA section 3544.9.

The Board has investigated internal union activities which have either interfered or discriminated against employees' by preventing participation in protected activities. (California State Employees Association (O'Connell) (1989) PERB Dec. No. 753-H). However, speech activity by the Union "is accorded generous protection" so long as it is related to matters of legitimate concern. (California Faculty Association (Hale, et al.) (1988) PERB Dec. No. 693-H.) Such free speech rights are similar to those accorded an employer. (California Faculty Association (Hale), supra.) The expression of views or opinion does not evidence an unfair practice unless there is a threat of reprisal or promise of benefit. (Rio Hondo Community College District (1980) PERB Dec. No. 128). Your allegations demonstrate no such threat or promise by the LRCFT.

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 **July 31, 1995, I**

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shall dismiss your charge. If you have any questions, please
call me at (916) 322-3198, extension 355.

Sincerely,

Bernard McMonigle
Regional Attorney

BMC:rmmh