

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LEWIS R. SHADE,)
)
 Charging Party,) Case No. LA-CO-704
)
 v.) PERB Decision No. 1183
)
 UNITED TEACHERS LOS ANGELES,) February. 20, 1997
)
 Respondent.)
 _____)

Appearance: Robert M. Moss, Attorney, for Lewis R. Shade.
Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION

CAFFREY, Chairman: This case is before the Public Employment Relations Board (Board) on appeal by Lewis R. Shade (Shade) of a Board agent's dismissal (attached) of his unfair practice charge. In his charge, Shade alleged that the United Teachers Los Angeles breached the duty of fair representation guaranteed by section 3544.9 of the Educational Employment Relations Act (EERA) 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:

(b) Impose or threaten to impose reprisals on employees, to discriminate or threaten to

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

ORDER

The unfair practice charge in Case No. LA-CO-704 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Johnson and Dyer joined in this Decision.

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



October 25, 1996

Lewis R. Shade

Re: DISMISSAL AND REFUSAL TO ISSUE COMPLAINT, Unfair Practice
Charge No. LA-CO-704, Lewis R. Shade v. United Teachers Los
Angeles

Dear Mr. Shade:

In the above-referenced charge, filed on June 25, 1996, you allege that United Teachers Los Angeles (UTLA) denied you the right to fair representation guaranteed by Government Code section 3544.9 of the Educational Employment Relations Act (EERA) and thereby violated EERA section 3543.6(b).

I indicated to you, in my attached letter dated October 4, 1996, 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 October 15, 1996, the charge would be dismissed. I later extended the deadline to October 24, 1996

On October 24, 1996, you filed an amended charge. Although the amended charge criticizes UTLA and the District, and argues in favor of your grievances, it is still not apparent from the charge that UTLA's conduct was arbitrary, discriminatory or in bad faith. I am therefore dismissing the charge, based on the facts and reasons contained in this letter and my October 4 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:

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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 (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

PUBLIC EMPLOYMENT RELATIONS BOARD



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



October 4, 1996

Lewis R. Shade

Re: WARNING LETTER, Unfair Practice Charge No. LA-CO-704,
Lewis R. Shade v. United Teachers Los Angeles

Dear Mr. Shade: _____

In the above-referenced charge, filed on June 25, 1996, you allege that United Teachers Los Angeles (UTLA) denied you the right to fair representation guaranteed by Government Code section 3544.9 of the Educational Employment Relations Act (EERA) and thereby violated EERA section 3543.6(b).

My investigation of the charge reveals the following relevant facts.

You are employed by the Los Angeles Unified School District in a unit for which UTLA is the exclusive representative. The charge alleges in part that UTLA failed to arbitrate several grievances, a number of them involving notices of suspension. On February 29, 1996, UTLA sent you a letter stating in part as follows:

Thank you for taking the time to present your case to the UTLA Grievance Review Committee. After giving full consideration to all information available to the committee, we have decided not to arbitrate this matter. Area Representative Elsie Myers has been advised to close the case.

On March 5, 1996, you sent UTLA a letter protesting this decision. On March 7, 1996, UTLA sent you a letter in reply, stating in part as follows:

Appeal rights were granted from the original decision of the Grievance Review Committee. You met with the Committee in appeal on February 28, 1996. The Committee was not convinced of the compelling nature of your argument for continuing to arbitration.

On April 2, 1996, in connection with two other grievances, UTLA sent you a letter stating in part as follows:

Upon careful review of the contract language and all the available material related to your case, UTLA has decided not to proceed in the above matter. However, you have the right to appeal this decision to the Grievance Review Committee of UTLA.

.

At the review meeting, you will be expected to provide persuasive documentation supporting your wish to proceed. If you feel witnesses would be useful, please provide written statements signed by the witnesses, including the facts to which they would testify if called before an arbitrator. You are allowed a total of 30 minutes, 20 minutes for your presentation and 10 minutes for questions. You will need to bring 8 copies of any written material with you. A written decision will be issued within 10 days of the review meeting.

You exercised your right to appeal. On April 26, 1996, UTLA sent you a letter denying the appeal, similar to the letter of February 29, 1996, quoted above. On June 6, 1996, in connection with another grievance, UTLA sent you a letter similar to the letter of April 2, 1996, quoted above. It is not apparent from the charge whether you exercised your right to appeal in that instance.

The charge also alleges that UTLA violated its duty by "[p]urporting to represent the grievant while attempting to mislead the grievant to believe that UTLA had withdrawn its appeal to arbitration." The charge explains as follows:

On March 4, 1996, Ms. Meyers[sic] of UTLA appealed a suspension (2/26 [sic]/96) to arbitration in a letter to Ms. Shirley Woo of LAUSD. I was informed by my employer on April 4, 1996 that the salary effects of my suspension (11/21/95) would occur on April 15, 16, 17, 1996 because UTLA had withdrawn my grievance (UTLA's appeal to arbitration, December 13, 1996 [sic]). I delivered a copy of this letter to Ms. Meyers on April 29, 1996. A few days later, I received a copy of a letter dated 4 [sic]/6/96 from Ms. Meyers of UTLA to Mr. Jack Jacobson, Coordinator, LAUSD. The letter stated "UTLA wishes to

withdraw the above-cited matter (Suspension 2/6/96) without precedence or prejudice." About one week later, my employer informed me in a letter (May 14, 1996) that the salary effects on my Suspension (2/6/96) would occur on May 20, 21, 22, 23, 24, 1996. This is the same Suspension (2/6/96) cited in the letter above from Ms. Meyers to Mr. Jacobson! Since the appeal to arbitration was sent to Ms. Woo, Assistant Superintendent, any withdrawal of the appeal would also be sent to Ms. Woo! Therefore, the letter (5/6/96) from Ms. Meyers to Mr. Jacobson was not relevant to the processing of any grievance and served no useful purpose except to mislead the grievant! Instead of denying the allegation by my employer that UTLA had withdrawn, Ms. Meyers chose to reinforce this allegation while purporting to represent the grievant. [Emphasis in the original.]

UTLA's letter to the District dated March 4, 1996, of which a copy was sent to you, stated in full as follows:

The above matter is referred to your office to be scheduled for expedited arbitration, pending a decision by the Grievance Review Committee.

UTLA's letter to the District dated May 6, 1996, of which a copy was sent to you, stated in full, "UTLA wishes to withdraw the above-cited matter without precedence or prejudice." Both letters appear to refer to a grievance (involving a notice of suspension dated February 6, 1996) in which the UTLA Grievance Review Committee denied your appeal on April 26, 1996, as opposed to the grievance in which your appeal was denied on February 29, 1996 (which apparently involved an earlier notice of suspension). A May 14 memorandum from your acting principal confirmed that the grievance had been withdrawn by UTLA.

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

As Charging Party, you have alleged that UTLA, as the 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. (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. [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." [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.]

In the present case, it does not appear from the charge that UTLA arbitrarily ignored your grievances or processed them in a perfunctory fashion. In each instance, UTLA gave you the right to appeal its decision to its Grievance Review Committee. Furthermore, although the number of grievances and underlying suspensions may have caused some confusion, it does not appear that UTLA attempted to mislead you about the process in any significant way. On April 26, 1996, UTLA informed you that your appeal was denied and the case would be closed; on May 6, 1996, UTLA withdrew the grievance from arbitration; and on May 14, 1996, your acting principal confirmed the withdrawal. It is thus not apparent from the charge that UTLA's conduct was arbitrary, discriminatory or in bad faith.

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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 October 15, 1996, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3542.

Sincerely,

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Thomas J. Allen
Regional Attorney