



STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

DEBORAH NEWTON COOKSEY,)	
)	
Charging Party,)	Case No. LA-CO-808
)	
v.)	PERB Decision No. 1387
)	
SAN BERNARDINO TEACHERS)	May 18, 2000
ASSOCIATION, CTA/NEA,)	
)	
Respondent.)	
_____)	

Appearance: Deborah Newton Cooksey, on her own behalf.
Before Dyer, Amador and Baker, Members.

DECISION

AMADOR, Member: This case comes before the Public Employment Relations Board (Board) on appeal from a Board agent's dismissal (attached) of Deborah Newton Cooksey's (Cooksey) unfair practice charge. The charge alleges that the San Bernardino Teachers Association, CTA/NEA breached its duty of fair representation in violation of sections 3544.9 and 3543.6(a) of the Educational Employment Relations Act (EERA) and discriminated against her in violation of EERA section 3543.6(b).¹

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

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 provides, in relevant part:

It shall be unlawful for an employee organization to:

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

ORDER

The unfair practice charge in Case No. LA-CO-808 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Dyer and Baker joined in this Decision.

(a) Cause or attempt to cause a public school employer to violate Section 3543.5.

(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



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916)327-8386
Fax:(916)327-6377



January 31, 2000

Dr. Deborah N. Cooksey, Ph.D.

Brenda Sutton-Wills, Esquire
California Teachers Association
11745 E. Telegraph road
Santa Fe Springs, California 90670-3676

Re: Deborah Newton Cooksey v. San Bernardino Teachers Association
Unfair Practice Charge No. LA-CO-808-E
DISMISSAL LETTER

Dear Dr. Cooksey:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on August 3, 1999. Your charge alleges that the San Bernardino Teachers Association (Association) violated the Educational Employment Relations Act (EERA)¹ by improperly representing you..

I indicated to you in my attached letter dated January 13, 2000, 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 20, 2000, the charge would be dismissed. You were granted an extension of one week.

I received your amended charge on January 28, 2000. In your amended charge, you contend that your charge should be reconsidered. You note that in my letter of January 13, 2000, I stated that a lawsuit for breach of contract by an employer is outside the duty of fair representation. You also note that California Government Code section 3543.8 gives an employee organization the right to sue on behalf of one or more of its members. However, the fact that an employee organization has the right to file a lawsuit on behalf of one or more of its members does not bring such lawsuits into the duty of fair representation. As stated in my letter to you of January 13, 2000, the duty of fair representation is limited to contractually

¹ EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

based remedies under the Association's exclusive control. (San Francisco Classroom Teachers Association (Chestangue) (1985) PERB Decision No. 544.) The action which you seek by the Association, filing a lawsuit over an alleged violation of your settlement agreement with the District, is not within the duty of fair representation. Accordingly, this allegation must be dismissed.

You also contend in your amended charge that the Association received notification in February 1999 of an alleged violation of your settlement agreement and was free to grieve the matter, including taking the matter to arbitration. You attached to your amended charge, a copy of Article 24 of the grievance procedure. I note that the first section in the grievance procedure defines a grievance which can be filed under the contractual procedure and states the following:

A grievance is a written allegation by a unit member(s) or Association that he/she/they has/have been adversely affected by an alleged violation, misinterpretation, or misapplication of a provision of this Agreement. [Emphasis added.]

Because the grievance procedure is limited to matters arising under the collective bargaining agreement, it appears not to be an avenue upon which your settlement agreement with the District may be enforced. Nor does the contract contain any provision which would bring the settlement agreement under the collective bargaining agreement and the grievance procedure. Accordingly, any allegation that the Association violated the duty of fair representation by not filing a grievance based on the February 1999 alleged violation of the settlement agreement must be dismissed.

For these reasons and the reasons discussed in my letter of January 13, 2000, this 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 after service of this dismissal. (Cal. Code Regs., tit. 8, sec. 32635(a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Cal. Code Regs., tit. 8, sec. 32135(a); see also Cal. Code Regs., tit. 8, sec. 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Cal. Code Regs., tit.8, sec. 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code. Regs., tit. 8, secs. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

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 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 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. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, sec. 32135(c).)

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 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,

ROBERT THOMPSON
Deputy General Counsel

By
Bernard McMonigle
Regional Attorney

Attachment

cc: Brenda Sutton-Wills, Esquire

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January 13, 2000

Dr. Deborah N. Cooksey, Ph.D.

Re: Deborah Newton Cooksey v. San Bernardino Teachers Association
Unfair Practice Charge No. LA-CO-808-E

WARNING LETTER

Dear Dr. Cooksey:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on August 3, 1999. Your charge alleges that the San Bernardino Teachers Association (Association) violated the Educational Employment Relations Act (EERA)¹ by improperly representing you. We discussed this matter on January 12, 2000, and I indicated that this letter was forthcoming.

Your charge states the following. In November 1997, you were represented by Association representative Conrad Ohlson in negotiations over a settlement agreement and general release between the San Bernardino City Unified School District (District) and yourself. According to your charge, Mr. Ohlson led you to believe that you would be represented by the Association's in-house attorney, Ron G. Skipper. However, it was Mr. Ohlson that represented you in negotiations of the settlement. Your resignation and the settlement agreement were a result of the District accusing you of working as a substitute for another school district while on sick leave. However, you were actually on accommodation leave and were permitted by your doctor to work at the other school district because it was a healthy work environment which had not been available to you at the District.

At the time you signed the settlement, you believed that you would be "held harmless" and that you would not be stigmatized for having resigned from the District. You state that Mr. Ohlson had assured you that the record would indicate that you had resigned voluntarily. You believed that the District would not give out negative information that could detrimentally affect your future employment.

In May 1998, you received a letter from the California Commission on Teacher Credentialing (Commission). The letter indicated that the Commission was in receipt of information that you had resigned from the District after a statement of charges was issued alleging you had

¹ EERA is codified at Government Code section 3540 et seq. The text of the EERA and the ~~Board's Regulations may be~~ found on the Internet at www.perb.ca.gov.

"committed acts which constituted immoral conduct, dishonesty, and evident unfitness for service." The Commission invited you to submit information for its consideration. In September 1998, you received another letter from the Commission which stated that its committee of credentials had found probable cause to recommend the suspension of your teaching credential for a minimum period often days. The letter presented you with options which include an administrative hearing.

In your charge, you contend that the Association's "inaction at the critical moment when the COTC notified me that the District had sent them charges against me, including false charges, constitutes dereliction of duty to a member." When you contacted Mr. Ohlson with regard to what you considered to be the District's breach of the settlement agreement, he merely stated "they were not supposed to do that" and failed to take action.

In the spring 1998, you requested that the California Teachers Association (CTA) provide legal services with respect to the action before the Commission. You were informed by CTA chief counsel, Beverly Tucker, that you were ineligible for these legal services because you were not a member. In our phone conversation of January 12, 2000, you indicated that CTA has since provided you with representation before the Commission.

In February 1999, you became aware that the District had informed a vocational consultant that you had resigned in lieu of termination and that the District would not consider you for a future rehire. Again, you contacted the Association regarding what you considered to be a breach of the settlement agreement. The Association responded to your request by offering to look into your personnel file for derogatory information and suggesting that you seek legal counsel regarding the matter.

According to your charge, you believe that the District has been allowed to violate the terms of your settlement agreement because the Association has not acted expeditiously in your behalf. You have been forced to use your own resources to pay for legal fees to enforce the settlement agreement.

Government Code section 3541.5(a)(1) states that PERB shall not "issue 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." Your charge was filed on August 3, 1999. Any alleged violations contained in the charge that occurred prior to February 3, 1999, are outside the six month statutory limitations-period and must be dismissed. Accordingly, to the extent that your charge alleges that you were not properly represented during the November 1997 negotiations over the settlement agreement, the charge must be dismissed. Further, the allegations regarding the Association's inaction upon learning of the action of the Commission on Teacher Credentialing in the spring of 1998, also appears to be untimely and must be dismissed.

The duty of fair representation is limited to contractually based remedies under the Association's exclusive control. (San Francisco Classroom Teachers Association (Chestangue) (1985) PERB Decision No. 544.) Accordingly, an association's duty of fair representation extends to collective bargaining negotiations and grievance handling. (Fremont Teachers Association (King) (1980) PERB Decision No. 125; United Teachers of Los Angeles (Collins) (1982) PERB Decision No. 258.) The Association has no duty to represent an employee where it does not have the exclusive right to act. (San Francisco Classroom Teachers Association (Chestangue). *supra*. Teacher in a dismissal proceeding pursuant to the Education Code.)

It does not appear from the facts provided that the Association possesses exclusive control over enforcement of the settlement agreement which was negotiated on your behalf in 1997, or of the current proceedings before the Commission. Because these matters are outside the duty of fair representation and you may represent yourself or seek private counsel for these proceedings, the Association has not violated its duty of fair representation. Accordingly, your charge must be dismissed.

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 have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative 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 20, 2000, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Bernard McMonigle
Regional Attorney

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