



STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

MICHAEL MORRISON,

Charging Party,

v.

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION, CHAPTER 296,

Respondent.

Case No. LA-CO-835-E

PERB Decision No. 1415

December 7, 2000

Appearance: Michael P. Calof, Attorney, for Michael Morrison.

Before Dyer, Amador and Baker, Members.

DECISION

BAKER, Member: This case comes before the Public Employment Relations Board (Board) on appeal by Michael Morrison (Morrison) from the Board agent's dismissal (attached) of his unfair practice charge.

The charge alleged that the California School Employees Association, Chapter 296 breached its duty of fair representation in violation of section 3544.9 of the Educational Employment Relations Act (EERA)¹ and thereby violated section 3543.6(b).²

¹ EERA 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.

² EERA section 3543.6 provides, in relevant part:

The Board has reviewed the entire record in this case, including the original and amended unfair practice charges and attachments, the warning and dismissal letters and Morrison'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-835-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Dyer and Amador 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



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8384
Fax: (916) 327-6377



July 11, 2000

Michael Morrison

Michael Calof

Madalyn Frazzini
Deputy Chief Counsel
California School Employees Association
P.O. Box 640
San Jose, CA 95106

Re: Michael Morrison v. California School Employees Association, Chapter 296
Unfair Practice Charge No. LA-CO-835-E
DISMISSAL LETTER

Dear Parties:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on May 23, 2000. Mr. Morrison alleges that the California School Employees Association (CSEA) violated the Educational Employment Relations Act (EERA)¹ at section 3544.9² by failing to file a grievance in actions taken against him by the Palmdale School District (District) on December 13, 1999 and January 7, 2000.

I indicated to Mr. Morrison in my attached letter dated June 23, 2000, that the above-referenced charge did not state a prima facie case. Mr. Morrison was advised that, if there were any factual inaccuracies or additional facts which would correct the deficiencies

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.

² EERA section 3544.9 reads:

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.

explained in that letter, he should amend the charge. Mr. Morrison was further advised that, unless he amended the charge to state a prima facie case or withdrew it prior to June 30, 2000, the charge would be dismissed. Mr. Morrison's representative, Michael Calof, requested and received an extension of time in which to file an amended charge until July 10, 2000.

On July 10, 2000, an amended charge was filed. Previously undiscovered information contained in the amended charge alleged that CSEA had treated Mr. Morrison arbitrarily by failing to investigate the contents of the video tape. In order for there to be a breach of the duty of fair representation, the union must have acted discriminatorily, arbitrarily, or in bad faith. (Rocklin Teachers Professional Association (Romero) (1980) PERB Decision No. 124) Mere negligence or poor judgement on the part of CSEA in giving Mr. Morrison the advice to resign prior to viewing the video tape does not amount to a breach of the duty of fair representation. For these reasons, Mr. Morrison's charge will be dismissed.

Right to Appeal

Pursuant to PERB Regulations³, 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. (Regulation 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. (Regulations 32135(a) and 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 Regulation 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. (Regulations 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174

³ PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Copies of the Regulations may be purchased from PERB's Publications Coordinator, 1031 18th Street, Sacramento, CA 95814-4174, and the text is available at www.perb.ca.gov.

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. (Regulation 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 Regulation 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. (Regulation 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. (Regulation 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
Andria K. Borba
Board Agent

Attachment

AKB

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8384
Fax: (916) 327-6377



June 23, 2000

Mr. Michael Morrison

Re: Michael Morrison v. California School Employees Association, Chapter 296
Unfair Practice Charge No. LA-CO-835-E
WARNING LETTER

Dear Mr. Morrison:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on May 23, 2000. You allege that the California School Employees Association (CSEA) violated the Educational Employment Relations Act (EERA)¹ at section 3544.9² by failing to file a grievance in actions taken against you by the Palmdale School District (District) on December 13, 1999 and January 7, 2000.

Investigation of the above referenced charge disclosed the following information:

You are a janitor for the Palmdale Unified School District. John Martin is the President of CSEA, Chapter 296. Jim Braugh is a labor representative from Chapter 296.

In December 1999, you were informed you were being placed on Administrative Leave by the District because a pornographic video tape had been found in one of the classrooms you were responsible for cleaning. You were told you would be contacted to schedule a later meeting to investigate the matter.

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.

² EERA section 3544.9 reads:

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.

On January 7, 2000, you were scheduled to appear at an investigatory meeting with the District. When you arrived at the District for the meeting, the receptionist asked you if you wanted your union representative to be present at the meeting. You responded that you did not believe you needed to have a representative present. The receptionist informed you that, in these types of meetings, a union representative is usually present. You called your union local and assessed them of the situation. Mr. Martin of CSEA was able to be present for the meeting and the meeting was held with Mr. Martin as your CSEA representative.

At this meeting, the District asked you questions and asserted that they had a witness who had seen you viewing the tape in the classroom. The District concluded that there would be a formal investigatory hearing in the future to determine the validity of the charges. The Superintendent of Personnel approached you at some point during the meeting and told you that it would be very difficult for you to explain these charges to future employers.

After the meeting, you asked Mr. Martin for his advice on how to proceed. Initially, Mr. Martin asked you why you had not attended CSEA membership meetings. You and Mr. Martin had a short discussion concerning the conflict between your schedule and the scheduled membership meetings. You then asked Mr. Martin if you should try to get the police to take fingerprints off the tape to prove that you had not handled the tape. Mr. Martin's response was to advise you to consider resigning from your position as janitor to avoid further investigation into the allegations. At some later point, you also had a conversation with Mr. Braugh of CSEA who told you that, if there was a hearing, it would be public record and you would never be able to find another job in the District whether you had committed the act or not.

After considering the conversations you had with both District and CSEA representatives on January 7, 2000, You resigned from your position the following Monday, January 10, 2000.

You allege that the representatives from CSEA did not inform you that the District had not followed the proper procedures for disciplinary actions as prescribed in Chapter IX, section 1(B)(C)(D) and (E)³ of the Collective Bargaining Agreement between the District and CSEA.

³ Chapter IX, section 1 of the Collective Bargaining Agreement reads:

(B) When a regular employee is to be suspended, demoted, or dismissed specific written charges shall be prepared by the administration, and presented for approval or rejection by the Governing Board. The charges must be such that the employee will know the complaints, and thereby be able to respond to them.

(C) When the formal disciplinary action has been approved by the Governing Board, the action and the charges shall be reported to the Personnel Director, who shall immediately notify the employee and shall report the action to the Commission at its next regular meeting.

You were never informed by CSEA representatives of any possibility of filing a grievance concerning the disciplinary action. You allege that, by not informing you of the grievance procedure, the union violated their duty of fair representation.

Your charge also states that representatives from CSEA failed to protect your rights as the exclusive representative in an administrative hearing.

Discussion

You have alleged that the exclusive representative denied you the right to fair representation guaranteed by EERA section 3544.9. In order to state a prima facie violation of this section of EERA, you must show that the Respondent'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....A union is also not required to process an employee's grievance if the chances for success are minimal.(citation omitted)

PERB has also held that, 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.]

(D) Notice to the employee shall include a copy of the charges and a statement of his right to appeal, if any, together with a copy of the rules governing appeal and hearing procedures.

(E) Notwithstanding the procedures prescribed above, an employee may be suspended prior to Board approval at the discretion of the administration subject to later ratification by the Board within two weeks. Requirements in regard to charges and notifications must be met when the Board ratified the administrative action.

In this case, you have not put forth sufficient evidence to support a violation of the duty of fair representation against the union because there is no evidence demonstrating the union's actions were arbitrary, discriminatory or in bad faith. Mr. Martin attended the meeting with you and gave you his advice. The fact that you took action based on Mr. Martin's advice, even if the advice was uninformed, is not enough to substantiate a violation of the duty of fair representation. There are no facts demonstrating any animus against you by CSEA and therefore, the prerequisites of discrimination or bad faith have not been met.

The union's failure to inform you of the grievance process is not enough to substantiate a prima facie case of arbitrary conduct violating the duty of fair representation. Based on the facts presented in this case, it is not clear that the actions taken by the District against you were, in fact, grievable. The District had not initiated a formal disciplinary action covered under Chapter IX, section 1 of the Collective Bargaining Agreement. You were put on paid Administrative Leave pending further investigation. Had evidence been presented demonstrating that the District had initiated a suspension, demotion, or dismissal then the grievance procedure as outlined in the Collective Bargaining Agreement may have been utilized.

In Bertha M. Chapple v. Teamsters Local 572 PERB concluded that the union's failure to file a grievance concerning an employee's demotion was not unlawful where there as no contractual grievance procedure. (Bertha M. Chappel v. Teamsters Local 572, ALJ Decision 1998). There was no contractual grievance procedure concerning the actions taken by the District and therefore CSEA did not violate its duty of fair representation.

Also, the conversation between you and Mr. Martin concerning your lack of participation in CSEA membership meetings does not prove a prima facie violation of the duty of fair representation. To substantiate a violation of the duty of fair representation, there must be evidence indicating that your lack of participation in CSEA membership meetings resulted in the union acting arbitrarily, discriminatory, or in bad faith. No information has been presented to prove that the union would have acted differently had you attended CSEA membership meetings.

Your allegation that CSEA violated their duty of fair representation by not representing you in an administrative hearing is unsuccessful because the January 7, 2000 meeting was not an administrative hearing.

Conclusion

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

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June 19, 2000

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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 7 days, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Andria K. Borba

Board Agent

AKB

