

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CHARMAINE ELIZABETH BRUCE,

Charging Party,

v.

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION & ITS CHAPTER 198,

Respondent.

Case No. SF-CO-688-E

PERB Decision No. 1858

September 7, 2006

Appearances: Charmaine Elizabeth Bruce, on her own behalf; Karen L. Hartmann, Attorney, for California School Employees Association & its Chapter 198.

Before Duncan, Chairman; Shek and Neuwald, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Charmaine Elizabeth Bruce (Bruce) to a Board agent's dismissal (attached) of her unfair practice charge. The charge alleges that the California School Employees Association & its Chapter 198 (CSEA) breached its duty of fair representation, guaranteed by the Educational Employment Relations Act (EERA)¹ section 3544.9, by withholding evidence that could have assisted her in retaining her position.

The Board agent dismissed the charge for failure to state a prima facie case. Bruce filed an appeal. CSEA responded to the appeal stating that the appeal does not meet the requirements of PERB Regulation 32635.²

¹EERA is codified at Government Code section 3540, et. seq.

²PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

We have reviewed the entire record in this case, including, but not limited to, the unfair practice charge, the warning and dismissal letters, Bruce's appeal and CSEA's response. We find the warning and dismissal letters of the Board agent to be free of prejudicial error and adopt them as the decision of the Board itself for the reasons set forth below.

DISCUSSION

In the appeal Bruce did not adhere to the necessary elements of PERB Regulation 32635. An appeal to the Board is required to conform to this regulation. Specifically, the appeal in this case fails to set forth "the specific issues of procedure, fact, law or rationale to which the appeal is taken." Further, the appeal does not "[i]dentify the page or part of the dismissal to which each appeal is taken" nor does it "[s]tate the grounds for each issue stated."³ A charging party may not raise new allegations or present new supporting evidence on appeal without establishing good cause.⁴ Bruce has articulated facts in the appeal in an apparent effort to clarify her original charge, but she has not established good cause for this additional information to be considered.

Bruce does not address specifically why the Board agent's dismissal should be reversed. In County of Solano (Human Resources Department) (2004) PERB Decision No. 1598-M, the Board dismissed the unfair practice charge for failure to state a prima facie case and because the appeal did not comply with PERB Regulation 32635. The Board agent has determined here that there is no prima facie case and we agree. The fact that the appeal does not comply with PERB Regulation 32635 requires dismissal of the charge.

³PERB Regulation 32635(a).

⁴PERB Regulation 32635(b).

ORDER

The unfair practice charge in Case No. SF-CO-688-E is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Members Shek and Neuwald joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1022
Fax: (510) 622-1027



March 27, 2006

Charmaine Bruce

Re: Charmaine Elizabeth Bruce v. California School Employees Association & its Chapter 198
Unfair Practice Charge No. SF-CO-688-E; First Amended Charge
DISMISSAL LETTER

Dear Ms. Bruce:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on March 8, 2006. Charmaine Elizabeth Bruce alleges that the California School Employees Association & its Chapter 198 violated the Educational Employment Relations Act (EERA)¹ by breaching its duty of fair representation.

I indicated to you in my attached letter dated March 15, 2006, 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 March 22, 2006, the charge would be dismissed.

On March 16, 2006, we spoke at length about your charge. During that conversation I explained that the amended charge needed to include the specific facts regarding your allegations, including a chronological timeline of events. Additionally, we discussed that your union had negotiated a settlement on your behalf, which you rejected. Lastly, I indicated that my notes of our conversation could not constitute an amended charge, and indicated you needed to file an amended charge and serve the amendment on CSEA.

On March 20, 2006, I received a one-page letter from you. The top of the letter indicates the letter to be an amended charge. However, the amended charge was not served upon CSEA as is required by PERB Regulation. Despite your failure to serve the amended charge, I will summarize the additional information provided.

The amended charge indicates that your union representative Monadel Herzalah did not sufficiently question witnesses at your hearing, did not use the evidence you suggested and did

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.

not adequately represent you. Additionally, you assert CSEA urged you to take a settlement offer you did not like.

Based on the information provided in the original and amended charge, the charge still fails to state a prima facie violation of the EERA.

Charging Party has alleged that the exclusive representative denied Charging Party 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, Charging Party 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. [Citations omitted.]

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. (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.]

Herein, facts presented fail to demonstrate the union acted arbitrarily or in bad faith. While the union may not have presented the case in a manner you were comfortable with, the duty of fair representation does not require the union to call all your witnesses or present documentary evidence you deem necessary. (United Teachers-Los Angeles (Farrar) (1990) PERB Decision No. 797.) Moreover, the union may decline to continue representing a grievant if the grievant rejects a settlement offer the union deems acceptable. (University of California (Comstock) (1989) PERB Decision No. 781-H.) As the charge fails to provide any information demonstrating the union breached its duty of fair representation, the charge must be dismissed.

Right to Appeal

Pursuant to PERB Regulations,² 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. (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
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).)

² PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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
General Counsel

By _____
Kristin L. Rosi
Regional Attorney

Attachment

cc: Karen Hartmann

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1022
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March 15, 2006

Charmaine Bruce

Re: Charmaine Elizabeth Bruce v. California School Employees Association & its Chapter 198

Unfair Practice Charge No. SF-CO-688-E

WARNING LETTER

Dear Ms. Bruce:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on March 8, 2006. Charmaine Elizabeth Bruce alleges that the California School Employees Association & its Chapter 198 violated the Educational Employment Relations Act (EERA)¹ by breaching its duty of fair representation.

Investigation of the charge revealed the following. You are employed by the Moreland School District as a Food Service Assistant. As such, you are exclusively represented by CSEA Chapter 198.

The charge states in its entirety as follows:

I am filing charges against CSEA for unfair practices. They withheld evidence that could have assisted me in retaining (sic) my position.

Based on the above stated facts, the charge as presently written, fails to state a prima facie violation of the EERA, for the reasons provided below.

PERB Regulation 32615(a)(5) requires, inter alia, that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." Thus, the charging party's burden includes alleging the "who, what, when, where and how" of an unfair practice. (State of California (Department of Food and Agriculture) (1994) PERB Decision No. 1071-S, citing United Teachers-Los Angeles (Ragsdale) (1992) PERB Decision No. 944.) Mere legal conclusions are not sufficient to state a prima facie case. (Ibid.; Charter Oak Unified School District (1991) PERB Decision No. 873.) Herein, the charge fails to

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provide any facts regarding the alleged violation of the EERA. As such, the charge fails to state a prima facie case.

Charging Party has alleged that the exclusive representative denied Charging Party 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, Charging Party 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. [Citations omitted.]

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. (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.]

With regard to when "mere negligence" might constitute arbitrary conduct, the Board observed in Coalition of University Employees (Buxton) (2003) PERB Decision No. 1517-H that, under federal precedent, a union's negligence breaches the duty of fair representation "in cases in which the individual interest at stake is strong and the union's failure to perform a ministerial act completely extinguishes the employee's right to pursue his claim." (Quoting Dutrisac v. Caterpillar Tractor Co. (9th Cir. 1983) 749 F.2d 1270 [113 LRRM 3532], at p. 1274; see also, Robesky v. Quantas Empire Airways Limited (9th Cir. 1978) 573 F.2d 1082 [98 LRRM 2090].)

Should you wish to amend this charge with the relevant information required, please note that the above standard will apply.

SF-CO-688-E
March 15, 2006
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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 that 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 March 22, 2006, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Kristin L. Rosi
Regional Attorney

KLR