

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



MANUELA G. PINA,

Charging Party,

v.

PUBLIC EMPLOYEES UNION LOCAL 1,

Respondent.

Case No. SF-CO-660-E

PERB Decision No. 1872

December 29, 2006

Appearances: Manuela G. Pina, on her own behalf; Jeff Apkarian, Business Agent, for Public Employees Union Local 1.

Before Duncan, Chairman; Shek and McKeag, Members.

DECISION

SHEK, Member: This case comes before the Public Employment Relations (PERB or Board) on appeal by Manuela G. Pina (Pina) of the dismissal (attached) of her unfair practice charge. Pina alleges that the Public Employees Union Local 1 (Union) failed in its duty of fair representation in dealing with Mt. Diablo Unified School District (District). Pina alleged that this conduct constituted a violation of sections 3544.9 and 3543.6(b) of the Educational Employment Relations Act (EERA).¹

The Board has reviewed the entire record in this case, including, but not limited to, the unfair practice charge, the Union's position statement, the warning and dismissal letters, the appeal letter, and the Union's opposition to the appeal. Based on this review, the Board adopts the warning and dismissal letters as the decision of the Board itself, subject to the following discussion.

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

Pina filed the charge on July 12, 2005, but the charge failed to provide any statement of facts. The August 4, 2005 warning letter informed Pina that a charge must include the “who, what, when, where and how” of an unfair practice, and gave Pina until August 11, 2005 to file an amended charge. No amendment was filed by the deadline, and the Board agent issued the dismissal letter on August 12, 2005.

Pina’s September 2, 2005 appeal letter included another completed unfair practice charge form, as well as additional detail about her charge. This attempted amendment of the charge was untimely, unless there was good cause for the late filing.² In this case, there were insufficient allegations to establish good cause.

Even if the September 2, 2005 letter had been a timely amendment to the charge, it failed to provide sufficient factual detail to establish a prima facie case. The letter alleged that the Union failed to represent her when she was fired. The letter stated that the Union steward “reported to my supervisor all issues that I told him” because he was on the side of the District. The letter alleged that when Pina called the Union, they never answered; that they never returned her calls; and that they promised to see her later but never did. The letter further alleged that attorneys would not take her case because the Union failed to do so. However, the September 2, 2005 letter did not state “who”, “when”, or “where,” and therefore failed to state a prima facie case. (See State of California (Department of Food and Agriculture) (1994)

²In general, the charging party may file an amended charge “[b]efore the Board agent issues or refuses to issue a complaint,” PERB Regulation 32621 (PERB Regs. are codified at Cal. Code Regs., tit. 8, sec. 31001, et seq.), not after the charge is dismissed. However, the Board may excuse a late filing for good cause, where the explanation was “reasonable and credible.” (See, e.g., Barstow Unified School District (1996) PERB Order No. Ad-227 (excusing late filing where a computer error caused the document to be mailed to the wrong office).) Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence. (PERB Reg. 32635(b); Los Angeles County Office of Education (2005) PERB Dec. No. 1743.)

PERB Decision No. 1071-S; United Teachers-Los Angeles (Ragsdale) (1992) PERB Decision No. 944.)

ORDER

The unfair practice charge in Case No. SF-CO-660-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member McKeag 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



August 12, 2005

Manuela Pina

Re: Manuela G. Pina v. Public Employees Union Local 1
Unfair Practice Charge No. SF-CO-660-E
DISMISSAL LETTER

Dear Ms. Pina:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on July 12, 2005. Manuela G. Pina alleges that the Public Employees Union Local 1 violated the Educational Employment Relations Act (EERA)¹ by breached its duty of fair representation.

I indicated to you in my attached letter dated August 4, 2005, 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 August 11, 2005, the charge would be dismissed.

I have not received either an amended charge or a request for withdrawal. Therefore, I am dismissing the charge based on the facts and reasons contained in my August 4, 2005, letter.

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

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

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).)

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.

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Sincerely,

ROBERT THOMPSON
General Counsel

By _____

Kristin L. Rosi
Regional Attorney

Attachment

cc: Jeff Apkarian

PUBLIC EMPLOYMENT RELATIONS BOARD

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



August 4, 2005

Manuela G. Pina

Re: Manuela G. Pina v. Public Employees Union Local 1
Unfair Practice Charge No. SF-CO-660-E
WARNING LETTER

Dear Ms. Pina:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on July 12, 2005. Manuela G. Pina alleges that the Public Employees Union Local 1 violated the Educational Employment Relations Act (EERA)¹ by breached its duty of fair representation.

The charge states in its entirety as follows:

Failed to fairly represent me in dealings with the Mt. Diablo
Unified School District.

On July 12, 2005, you filed this charge. However, the charge did not contain a Proof of Service as required by PERB Regulation 32615(b). On July 13, 2005, PERB sent you a letter concerning the deficiency in your filing and instructed you to provide a proof of service by July 25, 2005.

On August 2, 2005, PERB received a proof of service form indicating you served Local 1 on July 27, 2005.

Based on the above stated facts, the charge 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

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.

Oak Unified School District (1991) PERB Decision No. 873.) Herein, both the original and supplemental charge forms fail to provide any statement of facts. As such, PERB cannot determine if the charge has merit or if it is timely filed.

It appears you wish to allege the union violated the duty of fair representation. In order to assist you in creating a statement of facts, I have provided you, below, with the duty of fair representation standard. Should you wish to amend this charge, this standard must be met before a complaint may issue.

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].)

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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 August 11, 2005, 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