STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

LAURENDA GEORGE, Charging Party, v. SEIU LOCAL 1000, Respondent.	Case No. SA-CO-299-S PERB Decision No. 1984-S October 31, 2008

Appearance: Laurenda George, on her own behalf.

Before Neuwald, Chair; Wesley and Rystrom, Members.

DECISION

WESLEY, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Laurenda George (George) of a Board agent's dismissal (attached) of her unfair practice charge. The charge alleges that SEIU Local 1000 (Local 1000) breached its duty of fair representation in violation of the Ralph C. Dills Act (Dills Act)[1].

The Board has reviewed the entire record in this matter, including the original and amended unfair practice charge, Local 1000's response to the charge, the warning and dismissal letters, and George's appeal. The Board affirms the dismissal of the charge and adopts the Board agent's dismissal as the decision of the Board itself consistent with the discussion below.

The Board agent dismissed certain allegations in the charge as untimely filed. Dills Act section 3514.5(a)(1) prohibits PERB from issuing a complaint with respect to "any charge

[1]The Dills Act is codified at Government Code section 3512 et seq.

based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." The statutory limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (Gavilan Joint Community College District (1996) PERB Decision No. 1177.)

The Board agent's dismissal appears to suggest that a charging party's burden to allege facts to establish the timeliness of a charge at the investigative stage arises only after a respondent has raised the statute of limitations as an affirmative defense. However, the Board has long held that in order to state a prima facie case, a charging party must allege sufficient facts to demonstrate that the charge is timely filed. (Tehachapi Unified School District (1993) PERB Decision No. 1024; State of California (Department of Insurance) (1997) PERB Decision No. 1197-S.)

Also, George submitted new evidence and allegations in her appeal and after the filings in this case were complete. PERB Regulation 32635(b)[2] prohibits a charging party from submitting new evidence and allegations on appeal absent good cause. We do not find good cause to consider the late filings.

ORDER

The unfair practice charge in Case No. SA-CO-299-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chair Neuwald and Member Rystrom joined in this Decision.

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

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

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July 23, 2007

Laurenda George

Re: Laurenda George v. SEIU Local 1000
Unfair Practice Charge No. SA-CO-299-S
DISMISSAL LETTER

Dear Ms. George:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on February 28, 2007. Laurenda George alleges that SEIU Local 1000 (Union) violated the Ralph C. Dills Act (Dills Act).[1] The statement of the original charge alleged that:

> The State Controller's Office and the SEIU Local 1000 are using an improper third party probationary period to terminate me based on harassment[,] using a stipulated settlement agreement.

Attached to the charge is a draft (and unsigned) settlement agreement regarding an appeal pending before the State Personnel Board (SPB). Also attached are numerous emails exchanged by Ms. George and Jake Hurley, a Union attorney, as well as emails exchanged by Ms. George and Vicki Tully, Ms. George's supervisor at the State Controller's Office. The charge further states that Ms. George is employed by the State Controller's Office (SCO) in a position included in State Bargaining Unit 1. Unit 1 is exclusively represented by the Union.

I informed you in my attached letter dated March 19, 2007, 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 that 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 29, 2007, the charge would be dismissed. At your request, additional time to perfect the filing of an amended charge was granted, and a First Amended Charge was filed with PERB on April 9, 2007. On June 4, 2007, a Second Amended Charge was filed.

[1] The Dills Act is codified at Government Code section 3512 et seq. The text of the Dills Act and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

First Amended Charge

The First Amended Charge briefly states the alleged violation as the Union's failure to enforce the Bargaining Unit 1 contract. The First Amended Charge then itemizes this allegation in four parts:

1. The Union's refusal to submit a grievance on Ms. George's behalf against Vicki Tully, Manager I in the SCO's Unclaimed Property Division "for Ms. Tully's continuous violation" of the contract since April 19, 2005. The First Amended Charge alleges 15 separate actions taken against Ms. George's interests during the period from April 2005 through February 15, 2007. While acknowledging that certain of the described actions occurred more than six months prior to the filing of the charge, Ms. George contends that the events listed "collectively [] represent a pattern of continuous inaction relative to SEIU Local 1000 in response to a meritorious complaint which ultimately resulted in the challenged conduct: A third/improper probationary period and subsequent Report of Performance for Probationary Employee issued to [Ms. George] on August 30, 2006 which is adverse in nature." Thus, Ms. George contends the events alleged should be considered as timely, for purposes of the applicable statute of limitations, as continuing violations of the Union's duty of fair representation.

2. The refusal by Union Labor Relations Representative Shawn Walker to represent Ms. George "during an investigatory meeting with Ms. Tully to discuss a third/improper probationary period Report of Performance for Probationary Employee."

3. Ms. Walker's "collusion with Ms. Tully" that interfered with Ms. George's "right to submit a timely Appeal of Performance Report to the Department of Personnel Administration (DPA) in dispute of the aforementioned third/improper probationary period and subsequent Report(s) of Performance for Probationary Employee."

4. The "discriminatory bad faith conduct of Mr. Jake Hurley," a Union attorney, "when during the period of November 28, 2006 to February 23, [2007], Mr. Hurley interfered with [Ms. George's] protected right to file a timely Unfair Practice Charge by feigning representation which also had an adverse effect on [Ms. George's] March 29, 2007 State Personnel Board hearing."

As background, the First Amended Charge includes information dating back to August 15, 2003, concerning Ms. George's employment at the SCO, culminating in her involuntary transfer in March or April 2005 to the position under Ms. Tully's supervision. The First Amended Charge then recounts in detail various employment-related disputes with Ms. Tully and the SCO, including the filing of a whistleblower retaliation complaint, grievances, an EEOC complaint, and an appeal of performance appraisal. In all, the statement of the First Amended Charge consists of 42 pages, with 66 attachments numbering approximately 200 pages.

Discussion

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." (See Regents of the University of California (2004) PERB Decision No. 1585-H (Sarka).) Legal conclusions are not sufficient to state a prima facie case. (State of California (Department of Food and Agriculture) (1994) PERB Decision No. 1071-S; Charter Oak Unified School District (1991) PERB Decision No. 873.)

Much of the information in the First Amended Charge is focused on conduct of the employer and is not relevant to an analysis of whether the Union breached its duty of fair representation. The right to fair representation is guaranteed by Dills Act section 3515.7(g) and California State Employees' Association (Norgard) (1984) PERB Decision No. 451-S, and a breach of this duty violates section 3519.5(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.) To state a prima facie violation of this section of the Dills Act, 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.

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, at p. 1274; see also, Robesky v. Quantas Empire Airways Limited (9th Cir. 1978) 573 F.2d 1082.)

A union does not owe a duty of fair representation to unit members in a forum over which the union does not exclusively control the means to a particular remedy. Thus, for example, refusing to assist an employee in an appeal before the State Personnel Board (SPB) is not a violation (Stationary Engineers Local 39 (Quigley) (2005) PERB Decision No. 1790-S), nor is a union required to assist an employee with filing an unfair practice charge with PERB. (Teamsters Local 228 (Cardoso) (2006) PERB Decision No. 1845.)

Further, Dills Act section 3514.5(a)(1) prohibits PERB from issuing a complaint with respect to "any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (Gavilan Joint Community College District (1996) PERB Decision No. 1177.) The statute of limitations is an affirmative defense raised by the respondent in this case. (Long Beach Community College District (2003) PERB Decision No. 1564.) Therefore, charging party bears the burden of demonstrating that the charge is timely filed. (cf. Tehachapi Unified School District (1993) PERB Decision No. 1024; State of California (Department of Insurance) (1997) PERB Decision No. 1197-S.)

With the above standards in mind, each of the alleged violations of the duty of fair representation that can be discerned from the charge materials will be discussed.

Arbitrary Conduct

On pages 22-24 of the statement of the First Amended Charge, Ms. George describes six incidents that are alleged in support of the claim that the Union's conduct was arbitrary. The first numbered item references Ms. Walker's acknowledgement on January 13, 2005, that Ms. Tully was "harassing" Ms. George, and Ms. Walker's request on July 26, 2006, that Ms. George prepare a rebuttal to an informal reprimand received from Ms. Tully while Ms. Walker pursued a grievance. The conduct described in this paragraph is outside the six-months limitations period, and does not describe conduct that breaches the duty of fair representation. For these reasons, this allegation will be dismissed.

The second numbered item states that, on August 7, 2006, Ms. Walker e-mailed Ms. George concerning a desire to follow-up with her regarding a grievance against Ms. Tully. The First Amended Charge further states that Ms. George asked Ms. Walker to file the grievance, or a PERB unfair practice charge. In the First Amended Charge, Ms. George opines, and cites "expert advise" of various law firms, to the effect that a grievance under Article 5.5 of the collective bargaining agreement alleging retaliation against Ms. George would have been meritorious. Implicit in the charge allegation is that Ms. Walker did not file a grievance, but the charge does not indicate when Ms. George learned of this or what explanation, if any, Ms.

Walker provided for not filing the grievance. The burden is upon a charging party to show how an exclusive representative abused its discretion and not on the union to show that it properly exercised it. (American Federation of Teachers College Guild, Local 1521 (Saxton) (1995) PERB Decision No. 1109.) As noted above, legal conclusions are not sufficient to state a prima facie case. (State of California (Department of Food and Agriculture), supra, PERB Decision No. 1071-S; Charter Oak Unified School District, supra, PERB Decision No. 873.) Thus, even assuming the charge allegation is timely filed, a prima facie violation of the duty of fair representation is not established, and the charge allegation will be dismissed.

The third numbered paragraph in this section of the charge again references lack of follow-up by Ms. Walker regarding the status of a grievance, but does not add any information to change the above-stated conclusion. Ms. George sent an e-mail to Ms. Walker on September 27, 2006,[2] inquiring as to the status of a grievance against Ms. Tully, and received a response to the effect that Ms. Walker was "not clear what [Ms. George was] referring to when" asking about the status of the complaint or grievance. Ms. George concludes that this response "implies dishonesty." Again, legal conclusions are not sufficient to state a prima facie case. This allegation must also be dismissed.

The fourth numbered paragraph merely states that, in the "same September 27, 2006 e-mail message, Ms. Walker referred me to a letter from Paul Harris III, Chief Counsel, SEIU Local 1000." The e-mail from Ms. Walker referenced in this paragraph, and presumably in the preceding paragraph, is not provided with the First Amended Charge. This paragraph of the First Amended Charge does not state a prima facie violation of the duty of fair representation.

The fifth numbered paragraph regarding arbitrary conduct references a letter sent by Ms. George to the Union on August 23, 2006, expressing concerns about her representation, and the September 20, 2006, letter from Mr. Harris in response. The First Amended Charge alleges that Mr. Harris' letter[3] included the following: "After conducting an extensive investigation, I have been unable to substantiate any of your allegations." Ms. George alleges that Mr. Harris' statement lacks a rational basis as he had not contacted her for information, and the Union did not request documents from her until December 18, 2006. The First Amended Charge here again relies on legal conclusions and does not provide sufficient, specific information to establish a breach of the duty of fair representation. This allegation will also be dismissed.

The sixth numbered paragraph also addresses a statement in Mr. Harris' September 20 letter, but focuses primarily on advice received from a Union steward in October 2005. On October 18, 2005, Ms. George e-mailed Ray Reynolds, a Union steward, concerning a meeting she had scheduled for the following day with Ms. Tully. Ms. George's e-mail stated that she had been unable to obtain representation for the meeting. Her e-mail further stated that, in the event Mr. Reynolds was unable to attend, she would "understand and [would] tape the meeting for [her]

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[2] The text of the First Amended Charge references the date of the e-mail as August 7, 2006, but the attached copy of the referenced e-mail shows its date as September 27, 2006.

[3] The September 20, 2006 letter from Mr. Harris is not included among the 66 attachments to the amended charge.

attorney's review later." Mr. Reynolds responded, and advised that Ms. George tape the meeting "for later use by [Ms. George's] attorney as the Union does not represent individuals who are also being represented by someone else." Mr. Reynolds further stated that if Ms. George questioned his "decision," she should contact Ms. Walker.

Ms. George objects here to the statement in Mr. Harris' September 20 letter that "it also appears you were repeatedly warned by SEIU Local 1000 representatives that you did not have a right to tape record meetings with management." The First Amended Charge alleges that later discipline against Ms. George has referenced her recording of the October 19, 2005, meeting; that Mr. Reynolds' advice caused prejudice to her employment; and that Mr. Harris' failure to investigate the facts "constitutes more than negligence or ineptitude."

As noted earlier, the September 20 letter from Mr. Harris to Ms. George is not provided with the charge, and thus it is not clear whether Mr. Harris cited therein any specific advice given to Ms. George with respect to the tape recording of meetings with management. In any event, the facts presented with the charge make it clear that Ms. George expressed her intent to record the meeting in October 2005 before receiving Mr. Reynolds' advice to do so, and that Mr. Reynolds encouraged her to seek other advice if she did not disagree. Further, the advice by Mr. Reynolds and Ms. George's act of recording the meeting occurred in October 2005, and thus fall well beyond the six months statute of limitations. While Mr. Harris' letter was written within six months of the filing of the original charge, the charge as filed in February 2007 did not make any reference to the letter and did not allege that its contents constituted a breach of the Union's duty of fair representation. The allegations concerning the September 20 letter were only introduced with the First Amended Charge filed in June 2007, and thus the allegations are not timely. For all these reasons, this allegation must also be dismissed.

Discrimination

On pages 26-34 of the First Amended Charge, Ms. George focuses on interactions with Ms. Walker between July 10 and November 16, 2006, as evidence of the Union's failure to represent her. The First Amended Charge reiterates that Ms. George asked Ms. Walker on July 10 and August 8, 2006, to file a grievance against Ms. Tully. The First Amended Charge references an e-mail sent by Ms. Walker to Ms. George on August 8, 2006, stating, "I would like to follow up with you sometime this week regarding a grievance or filing a complaint against Vicki Tully." Ms. George does not state whether the requested meeting occurred, but does state that, sometime after August 23, 2006, she noticed the August 8 e-mail message was missing from her computer and that, despite repeated requests, Ms. Walker had not forwarded a copy to her subsequently.

On August 17, 2006, Ms. Walker forwarded an e-mail message to Ms. George requesting a return phone call. The First Amended Charge alleges the message was "deceptively titled" on the subject line as "RE: Trying to build a case." During the subsequent phone conversation, Ms. Walker informed Ms. George that she would no longer represent Ms. George in meetings with Ms. Tully and that Ms. George should document the meetings. Later that same day, Ms. Tully informed Ms. George that a meeting would soon be scheduled regarding Ms. George's

first probation report. Ms. George then replied to Ms. Walker disputing her decision not to attend meetings, such as the probation report meeting, with Ms. Tully. Ms. George sent another e-mail on the same topic to Ms. Walker on August 23, 2006, and also requesting information on how to grieve the legitimacy of her probation. Ms. Walker responded with information from the collective bargaining agreement regarding grievances.[4] On August 30, 2006, Ms. George met with Ms. Tully regarding what the First Amended Charge characterizes as the "third/improper probationary period Report of Performance for Probationary Employee."[5]

The above information does not state a prima facie violation of the duty of fair representation, and will be dismissed, for the following reasons. First, all of the conduct occurred outside the six months statute of limitations period. In addition, the charge does not establish that the August 30, 2006 meeting was of a nature that any duty would attach to the exclusive representative to require a representative to attend. The meeting was scheduled to review a probation report, and not as an investigatory meeting that might lead to discipline, nor as a meeting to consider a grievance filed by the Union or Ms. George.

This section of the First Amended Charge next addresses Ms. Tully's denial of a one-day vacation request, for September 28, 2006, by Ms. George. Ms. George contacted Ms. Walker and asked her to grieve the vacation request denial. Ms. Walker declined to do so, citing the "on-going attendance problem" that Ms. Tully had cited in denying the request. Ms. George alleges that Ms. Walker's failure to inquire into the validity of the "attendance problem" was "so unreasonable as to be arbitrary." Ms. George further alleges that the denial of her vacation request, and Ms. Walker's refusal to enforce the collective bargaining agreement,[6] caused her appeal of her performance appraisal to be filed late.

The allegation regarding the Union's refusal to file a grievance over the vacation request denial also fails to state a prima facie violation and will be dismissed. An exclusive representative does not violate the duty of fair representation where it provides an explanation for its conclusion that a grievance lacks merit and declines to pursue the grievance. (AFT Local 1521 (Paige) (2005) PERB Decision No. 1769.) As discussed previously, the burden is upon a charging party to show how an exclusive representative abused its discretion and not on the union to show that it properly exercised it. (American Federation of Teachers College Guild, Local 1521 (Saxton), supra, PERB Decision No. 1109; see, also, California State Employees Association (Harris) (2004) PERB Decision No. 1696-S.)

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[4] The amended charge does not include Ms. Walker's e-mail message as an attachment, nor further indicate what information was provided.

[5] Much of the information in the charge addresses Ms. George's dispute with her employer over her being subject to probation at the time. As the instant charge is filed against the Union, and not the State, the merits of this dispute are not considered herein.

[6] The amended charge does not indicate whether Ms. George filed a grievance herself over the vacation request denial.

The First Amended Charge states that Ms. George "threatened" Ms. Walker with a PERB unfair practice charge if she refused to represent Ms. George at a second probation report meeting scheduled for November 16, 2006. Ms. Walker did attend the meeting but "sat silently through the entire meeting." As discussed above, the charge does not establish that the Union is obligated to attend or represent an employee during a discussion of a probation report, and thus this allegation also fails to state a prima facie violation and will be dismissed.

November 28, 2006 through February 23, 2007

The First Amended Charge alleges that Mr. Hurley's conduct during this period was "discriminatory, devoid of honest judgment and in bad faith relative to SEIU Local 1000 representation with the ultimate unlawful motive of rendering this Unfair Practice Charge untimely." Pages 34-41 of the First Amended Charge address this contention.

In the First Amended Charge, Ms. George describes her initial contact with Mr. Hurley as follows:

> Mr. Hurley contacted me, after I "threatened" a [PERB] complaint against SEIU Local 1000 in my November 15, 2006 e-mail message to Ms. Walker, informing me that he would be representing me. Mr. Hurley explained that in his legal opinion, the third probationary period was "improper." Apparently this is why Ms. Walker refused and later was reluctant to represent me during meetings with Ms. Tully to discuss the subsequent Reports of Performance for Probationary Employees for the third "improper" probationary period. Mr. Hurley was consistent in this conclusion throughout all of our conversations verbally and via e-mail informing me that he was attempting to correct the problem. [Emphasis in original.]

The First Amended Charge also attaches an e-mail received by Ms. George from Mr. Hurley on November 28, 2006. The message reads:

> As per our telephone conversation (and your request) I am contacting you via email regarding my conversation with Mr. Anderson this morning. I discussed the facts of your case with Mr. Anderson[7] and my concern that it is my understanding that you have been placed on probationary status. Mr. Anderson seemed genuinely surprised that you were on probation and stated that if you were, you should not be. Assuming that you are indeed on probation, he agreed that you should be taken off probation and that any documents relating to an improper

[7] Mr. Anderson is identified in charge documents as Gerard Anderson, a manager in SCO's Human Resources Division.

> probationary period should be expunged from your file. He is looking into that situation now and expects to get back to me sometime today. If you have any questions or concerns, please contact me[.]

The First Amended Charge references, at one point, a statement by Mr. Hurley in his November 28, 2006, e-mail message that he had "no idea what this sentence means with regard to SEIU Local 1000." I am unable to locate such a statement in the above-quoted text of the November 28, 2006, e-mail message nor am I able to locate such a statement among the various attachments to the charge.[8]

The First Amended Charge next describes a telephone conversation between Ms. George and Mr. Hurley on November 29, 2006. During this conversation, Mr. Hurley stated that "SCO management had no problem" with Ms. George's work, but that Mr. Anderson wanted Ms. George to stop talking about the circumstances of her transfer to the Unclaimed Property Division.

The First Amended Charge, referencing Attachment 27, next alleges that, on December 18, 2006, "Mr. Hurley accused [Ms. George] of behavior that warranted management returning the counseling memoranda" to her file. The First Amended Charge concludes that this conduct was biased and "so unreasonable as to be arbitrary and discriminatory." However, the only communication from Mr. Hurley included under Attachment 27 is an e-mail message dated December 18, 2006, responding to one of the same date from Ms. George, and stating, "I am unaware of any meeting. Please let me know when you intend to be here if you desire to meet with me. Thanks!" Also included under Attachment 27 is an e-mail message from Ms. George to Mr. Hurley and Ms. Tully, dated December 14, 2006, in which Ms. George summarizes her understanding of statements made by Mr. Hurley in a telephone conversation of the same date, as well as her responses to the statements. The statements attributed to Mr. Hurley are as follows:

> In our telephone conversation today, you informed me that the meeting below would be canceled because you are unwilling to address management's concerns regarding your attitude at work until every issue you have is completely resolved to your satisfaction.
>
> It is also my understanding, after our telephone conversation today, that you do not think it necessary to meet with Ms. Walker and I next week to further clarify facts and strategy.

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[8] As discussed earlier, the charging party's burden includes providing a clear and concise statement of facts; and the Board has held that submitting a charge with hundreds of pages of attachments does not meet this standard. (Regents of the University of California, supra, PERB Decision No. 1585-H.)

> Please note that I advised you to inform your supervisor that the cancellation of the meeting was due to a misunderstanding that I had with regards to the meeting I attempted to set up between you, Ms. Walker and I. I am concerned that the email below may be interpreted by management as curt, or worse yet, discourteous.

Central to the allegations based on Mr. Hurley's conduct are Ms. George's objections to a draft settlement agreement prepared by Mr. Hurley with respect to a pending appeal before the State Personnel Board (SPB). In addition to her substantive objections to the contents of the draft, which Ms. George contends would have caused harm to her employment relationship with the SCO, Ms. George concludes that Mr. Hurley was merely "feigning" to represent her as a means delay the filing of the instant unfair practice charge against the Union.

As discussed in my March 19, 2007 letter, an exclusive representative does not owe a duty of fair representation to unit members in a forum over which the union does not exclusively control the means to a particular remedy. (California State Employees Association (Parisi) (1989) PERB Decision No. 733-S.) Accordingly, the duty of fair representation does not attach to an exclusive representative in extra-contractual proceedings before agencies such as the Department of Fair Employment and Housing or the State Personnel Board. (California Union of Safety Employees (John) (1994) PERB Decision No. 1064-S; California State Employees Association (Carrillo) (1997) PERB Decision No. 1199-S.) For this reason, the allegations in the charge relating to Mr. Hurley's representation of Ms. George with respect to matters pending before the SPB do not support finding a prima facie violation of the duty of fair representation.[9] Nor does the legal conclusion, unsupported by specific evidence, that Mr. Hurley "feigned" representation in order to delay the filing of the charge support a finding that the Union interfered with Ms. George's rights under the Dills Act.

For the above reasons, the allegations concerning Mr. Hurley's conduct on behalf of the Union will also be dismissed.

Second Amended Charge

In a brief statement of the charge in the Second Amended Charge, Ms. George alleges that

> SEIU Local 1000 is refusing to represent me fairly (and has terminated representation) relative to the State Controller's Office (SCO) and is assisting the SCO in terminating me from State service via adverse action in collusion with Mr. Gerard Anderson, Chief, Human Resources Division, and Vicki Tully, Manager I, SCO, Unclaimed Property Division.

[9] It is further noted that an exclusive representative may withdraw from representation if it feels that its client is not following its advice and is acting independently in a manner that undermines the representation process. (American Federation of Teachers College Staff Guild, Local 1521, CFT/AFT, AFL-CIO (Mrvichin) (1996) PERB Decision No. 1132.)

The Second Amended Charge was submitted, in part, to provide corrections to and clarification of certain attachments to the First Amended Charge. In addition, the Second Amended Charge provides argument in response to my March 19, 2007 letter, and adds one new allegation.

While acknowledging the lack of any contractual obligation on the part of the Union to represent her at a March 29, 2007 SPB hearing, Ms. George argues, citing California Union of Safety Employees (Coelho) (1994) PERB Decision No. 1032-S (CAUSE), that "Mr. Hurley's abrupt withdrawal of representation was based on discrimination and unlawful motive," and that the Union is "deliberately refusing to fairly represent [Ms. George] (and has terminated representation) by covertly assisting [SCO] in terminating" Ms. George.

First, I find reliance on CAUSE in the instant case misplaced and unpersuasive due to significant factual distinctions. In CAUSE, the exclusive representative itself filed a citizen's complaint against Coelho, and a discrimination violation was found based on evidence that this adverse action was taken because of Coelho's filing of an earlier unfair practice charge against the union, and his assistance to other employees in filing a grievance. Here, while Ms. George alleges as a conclusion that the Union is assisting Ms. George's employer in taking adverse action against her, there is no specific evidence to support a finding that the Union has done so. The issue here, instead, is whether the Union breached its duty of fair representation by ceasing its representation of Ms. George in an SPB appeal action. For reasons previously discussed, I conclude that this allegation must be dismissed.

The final issue, which was briefly addressed in the First Amended Charge and later expanded upon in the Second Amended Charge, concerns a problem Ms. George had with her computer at work on February 28, 2007. Ms. George states that the A drive on her computer worked perfectly the day before, but that on February 28 the A drive malfunctioned. Ms. George reported this problem to Ms. Tully and Ms. Tully's supervisor, and requested on February 28, March 28, and May 18, 2007, that the drive be repaired. Ultimately, Ms. George determined that one of Ms. Walker's business cards was lodged in the A drive, preventing it from reading disks. Once the card was removed, the drive worked perfectly again. The Second Amended Charge alleges that Ms. Tully disabled Ms. George's computer in an effort to prevent Ms. George filing a timely unfair practice charge against the Union.

This allegation must be dismissed for several reasons. First, the instant charge is filed against the Union and this allegation concerns alleged conduct by an agent of the employer. The charge does not contain facts that would establish an agency relationship between Ms. Tully and the Union. Second, the allegation does not demonstrate how the disabling of State equipment interferes with the exercise of rights under the Dills Act. An interference violation may only be found if the Dills Act provides the claimed rights. (Regents of the University of California (2006) PERB Decision No. 1804-H.) Finally, the Second Amended Charge surmises but does not establish through specific facts that Ms. Tully engaged in the complained-of conduct.

Conclusion

Therefore, I am dismissing the charge based on the facts and reasons set forth above, as well as those contained in my March 19, 2007 letter.

Right to Appeal

Pursuant to PERB Regulations,[10] 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 during a regular PERB business day. (Regulations 32135(a) and 32130; see also Government Code section 11020(a).) A document is also considered "filed" when received by facsimile transmission before the close of business 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 95811-4124
(916) 322-8231
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.) The document will be considered properly "served" when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also be

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

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,

TAMI R. BOGERT
General Counsel

By _____
Les Chisholm
Division Chief

Attachment

cc: Paul Harris

PUBLIC EMPLOYMENT RELATIONS BOARD

Office of the General Counsel
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8383
Fax: (916) 327-6377

March 19, 2007

Laurenda George

Re: Laurenda George v. SEIU Local 1000
Unfair Practice Charge No. SA-CO-299-S
WARNING LETTER

Dear Ms. George:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on February 28, 2007. Laurenda George alleges that SEIU Local 1000 (Union) violated the Ralph C. Dills Act (Dills Act).[1]

The statement of the charge consists of the following:

> The State Controller's Office and the SEIU Local 1000 are using an improper third party probationary period to terminate me based on harassment[,] using a stipulated settlement agreement.

Attached to the charge is a draft (and unsigned) settlement agreement regarding an appeal pending before the State Personnel Board (SPB). Also attached are numerous emails exchanged by Ms. George and Jake Hurley, a Union attorney, as well as emails exchanged by Ms. George and Vicki Tully. The position Ms. Tully holds is not clear except that it would appear that she is or was Ms. George's supervisor at the State Controller's Office. The charge further indicates, on its face, that Ms. George is employed by the State Controller's Office in a position included in State Bargaining Unit 1. Unit 1 is represented by the Union.

Discussion

The instant charge is filed against the Union and not the State Controller's Office. With this in mind, it appears Ms. George is alleging the Union breached its duty of fair representation.[2]

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[1] The Dills Act is codified at Government Code section 3512 et seq. The text of the Dills Act and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

[2] The Board has held that, where a charging party fails to allege that any specific section of the Government Code has been violated, the Board agent, upon a review of the charge, may determine under what section the charge should be analyzed. (Los Angeles County Office of Education (1999) PERB Decision No. 1360.)

The right to fair representation is guaranteed by Dills Act section 3515.7(g) and California State Employees' Association (Norgard) (1984) PERB Decision No. 451-S, and a breach of this duty and thereby violates section 3519.5(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 the Dills Act, 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].)

However, an exclusive representative does not owe a duty of fair representation to unit members in a forum over which the union does not exclusively control the means to a particular remedy. (California State Employees Association (Parisi) (1989) PERB Decision No. 733-S.) Accordingly, the duty of fair representation does not attach to an exclusive representative in extra-contractual proceedings before agencies such as the Department of Fair

Employment and Housing or the State Personnel Board. (California Union of Safety Employees (John) (1994) PERB Decision No. 1064-S; California State Employees Association (Carrillo) (1997) PERB Decision No. 1199-S.)

As noted above, the information provided with the instant charge indicates that the complained-of conduct by the Union is related to the Union's representation of Ms. George in a State Personnel Board appeal. Thus, under the precedent cited above, the Board has held that no duty exists and no breach of the duty of fair representation may be found. For this reason, the charge must be dismissed.

Further, while the attachments to the charge indicate that Ms. George disagreed with decisions made by Union representatives in its representation, the charge fails to present evidence that the Union's conduct lacked a without a rational basis or was devoid of honest judgment. (See, for example, California State Employees Association (Brushia) (1997) PERB Decision No. 1207-S and Riverside County Office Teachers Association, CTA/NEA (McAlpine, et al.) (2000) PERB Decision No. 1401.) For this reason, even if a duty of fair representation attached to the Union's conduct in this matter, the charge fails to state a prima facie violation.

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 29, 2007, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Les Chisholm
Division Chief