

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



JOHN W. ADAMS,

Charging Party,

v.

UNITED TEACHERS OF LOS ANGELES,

Respondent.

Case No. LA-CO-1339-E

PERB Decision No. 2012

March 13, 2009

Appearance: John W. Adams, on his own behalf.

Before Rystrom, Chair; Neuwald and Wesley, Members.

DECISION

WESLEY, Member: This case is before the Public Employment Relations Board (Board) on appeal by John W. Adams (Adams) of a Board agent's dismissal (attached) of his unfair practice charge. The charge alleged that Adams sought assistance from the United Teachers of Los Angeles (UTLA) on several issues against the Los Angeles Unified School District, beginning in March 2006, and that UTLA either refused to pursue, or did not adequately pursue, these matters in violation of the duty of fair representation under the Educational Employment Relations Act (EERA).¹

The Board has reviewed the entire record in this matter, including but not limited to, the original and amended unfair practice charge, the Board agent's warning and dismissal letters, and Adams' original and amended appeals. Based on this review, the Board finds the Board agent's warning and dismissal letters to be a correct statement of the law and well reasoned, and therefore adopts them as the decision of the Board itself.

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

ORDER

The unfair practice charge in Case No. LA-CO-1339-E is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Chair Rystrom and Member Neuwald joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Blvd., Suite 1435
Los Angeles, CA 90010-2334
Telephone: (213) 736-2907
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August 7, 2008

John W. Adams

Re: John W. Adams v. United Teachers of Los Angeles
Unfair Practice Charge No. LA-CO-1339-E
DISMISSAL LETTER

Dear Mr. Adams:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on April 3, 2008 by John W. Adams (Adams or Charging Party). On June 13, 2008, Adams filed an amended charge. Adams alleges that the United Teachers of Los Angeles (UTLA) violated the Educational Employment Relations Act (EERA)¹ by breaching its duty of fair representation.

Adams was informed in the attached Warning Letter dated July 15, 2008, that the above-referenced charge did not state a prima facie case. Adams was advised that, if there were any factual inaccuracies or additional facts that would correct the deficiencies explained in that letter, he should amend the charge. Adams was further advised that, unless he amended the charge to state a prima facie case or withdrew it prior to July 23, 2008, the charge would be dismissed. On July 29, 2008, the undersigned contacted Adams to inform him that this office did not receive a withdrawal or an amended charge. Adams stated that he was unsure whether he should amend the charge. The undersigned informed Adams that unless he filed an amended charge or withdrawal by August 1, 2008, the charge would be dismissed. On July 31, 2008, Adams filed an amended charge.

Facts Alleged in the Prior Charges

In the July 31, 2008 amended charge, Adams alleges some new facts, but does not include a statement of all allegations on which he relies on to meet his burden of stating a prima facie case, as required by PERB Regulation 32621.² In an effort to facilitate understanding of 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. Because certain allegations that appear in the original charge are not repeated in the most recent amended charge, those allegations are not properly filed.

issues raised in the July 31, 2008 amended charge, the following is a brief recitation of the relevant facts alleged in Adams' earlier charges, as these facts relate to Adams' new allegations.³ A more detailed discussion of these facts can be found in the July 15, 2008 Warning Letter.

In January 2008, Adams' employer Los Angeles Unified School District (LAUSD) issued to Adams a "Notice of Unsatisfactory Acts" and a five-day suspension. At Adams' request, UTLA representative Bruce Williams informed Adams that he would appeal LAUSD's actions through the discipline appeal process. Around that time, Adams requested that UTLA assist him with other issues, such as LAUSD's denial of seven days worth of "filer time" pay and LAUSD's requirement that Adams undergo a psychiatric evaluation prior to returning to work. Adams also requested an update on an earlier filed grievance concerning LAUSD's failure to abide by student discipline policies.

Regarding the "filler pay" grievance, Williams informed Adams a grievance would be untimely but, at Adams' insistence, Williams filed a grievance on that issue anyway. That grievance was later denied by LAUSD as untimely and UTLA declined to take it to arbitration. Regarding the psychiatric evaluation requirement, Williams informed Adams that LAUSD had the authority to order such an evaluation but that Adams should request that LAUSD confirm its order to undergo the evaluation in writing. Williams also stated that Adams should not be required to use his sick leave or other personal leave time for the evaluation. Williams stated that he would address the Notice of Unsatisfactory Acts, the five-day suspension, the psychiatric evaluation requirement, and the student discipline policies during the discipline appeal hearing.

Williams subsequently advised Adams that one reason that the discipline hearing had not been scheduled was because Adams had not agreed to return to work. LAUSD does not typically schedule discipline appeal hearings for employees who are absent.

Facts Alleged in the July 31, 2008 Amended Charge

In the July 31, 2008 amended charge, Adams asserts that the discipline appeal hearing has not been held yet. Adams also alleges that, on June 30, 2008 LAUSD terminated his employment. Adams informed UTLA of his termination on July 28, 2008.

³ In Adams' earlier filed charges in this case, Adams also makes several other allegations that are not addressed further in the July 31, 2008 amended charge. Because those allegations were addressed in the July 15, 2008 Warning Letter and no new information or argument was provided regarding them, these allegations are dismissed for the reasons discussed in the Warning Letter.

Discussion

As explained in the July 15, 2008 Warning Letter, to establish a violation of the duty of fair representation guaranteed by EERA section 3544.9, Adams must demonstrate that UTLA's actions or inactions were arbitrary, discriminatory, or in bad faith. (See Los Banos Teachers Association (Ulmschneider) (2007) PERB Decision No. 1922; Reed District Teachers Association, CTA/NEA (Reyes) (1983) PERB Decision No. 332.) Adams does not allege sufficient facts in the amended charge to meet this burden.

Adams contends that UTLA failed to address the issues regarding his discipline, the psychiatric evaluation requirement, and his grievance regarding the student discipline policy because no discipline appeal meeting has yet been held or scheduled. However, Adams does not establish that UTLA is responsible for any delays in scheduling of the hearing. Rather, it appears that Adams' own decision not to return to work may be delaying the resolution of these issues. Williams informed Adams that one of the reasons why no appeal hearing had been set was because Adams continued to be absent without justification. Accordingly, Adams has not demonstrated arbitrary, retaliatory, or bad faith conduct by UTLA.

Moreover, as stated in the July 15, 2008 Warning Letter, the Board has held that it is not a breach of the duty of fair representation to delay the resolution of grievances where the union preserved any timelines for filing an appropriate action and where the length of the grievance did not foreclose the employee's ability to obtain a remedy. (Service Employees International Union, Local 250 (Hessong) (2004) PERB Decision No. 1693-M.) In the present, case Adams has not demonstrated that UTLA failed to preserve any of the relevant timelines to address Adams' issues, or that UTLA's actions foreclosed Adams' ability to obtain a remedy. For these reasons, Adams does not establish that UTLA breached its duty of fair representation and this allegation is dismissed.

Adams also alleges that Williams incorrectly advised him that LAUSD had the authority to require that he undergo a psychiatric evaluation prior to returning to work. Adams does not provide sufficient information to conclude the reasons, if any, that Williams' statement was inaccurate. Adams only states that his attorneys informed him that LAUSD had no such authority. As stated in the July 15, 2008 Warning Letter, mere conclusory remarks are insufficient to state a prima facie case. (See State of California (Department of Food and Agriculture) (1994) PERB Decision No. 1071-S; Charter Oak Unified School District (1991) PERB Decision No. 873.) Therefore, the conclusory remarks of either Adams or his attorneys are not sufficient to meet the burden of stating a prima facie case. Moreover, even if Williams' gave Adams incorrect information, Adams does not establish that Williams' conduct was more than mere negligence, which, as stated in the July 15, 2008 Warning Letter, is typically insufficient to constitute a breach of the duty of fair representation. (See United Teachers of Los Angeles (Collins) (1982) PERB Decision No. 258.) Accordingly, Adams has not demonstrated that Williams' conduct was arbitrary, discriminatory, or in bad faith. (See Los Banos Teachers Association (Ulmschneider) (2007) PERB Decision No. 1922.) Accordingly, this allegation is dismissed.

Adams also alleges that Williams's statement contradicted his earlier advice that Adams obtain written confirmation of the psychiatric evaluation requirement from LAUSD and that Adams not use personal leave during the time it would take for the evaluation. Adams does not explain how this statement contradicts Williams' earlier statement that LAUSD had the authority to order a psychiatric evaluation. Williams never advised Adams not to undergo the evaluation ordered by LAUSD, only that Adams LAUSD should first confirm its order in writing and that Adams should not be required to use his sick days or other personal leave for the evaluation. Furthermore, even if the advice were contradictory, Adams does not demonstrate that Williams' actions constituted more than mere negligence. (Collins, supra, PERB Decision No. 258.) For these reasons, this allegation does not state a prima facie case and is dismissed.

Adams also states that, on July 28, 2008, he notified UTLA by letter that LAUSD terminated his employment on June 30, 2008. By July 31, 2008, the date of the most recent amended charge, UTLA has not responded to Adams' letter. Adams demands to know what UTLA is doing to prevent further harm to him, but Adams did not request that UTLA initiate the grievance process or take some other specific action over the termination. Therefore, it is unclear what actions, if any, Adams contends to be the breach of UTLA's duty of fair representation. Even if the duty of fair representation required UTLA to take some action on Adams' behalf, Adams does not establish how failing to take such action during the three-day period at issue here constitutes a breach of the duty of that duty. As noted in the July 15, 2008 Warning Letter and above, the timeliness of a union's actions does not breach the duty of fair representation where any delay in action does not foreclose the employee's ability to obtain a remedy. (See Hessong, supra, (2004) PERB Decision No. 1693-M.) Here, Adams does not demonstrate that UTLA's failure to act between July 28, 2008 and July 31, 2008 foreclosed his ability to obtain assistance from UTLA. Therefore, this allegation does not state a prima facie case and is dismissed.

Adams also alleges that UTLA gave preferential treatment to another unit member because it assisted that member after he was involuntarily transferred to another school site. Adams does not provide sufficient facts to demonstrate that his circumstances were similar to the other unit member, warranting similar treatment. Thus, Adams does not demonstrate how UTLA's treatment of this other unit member is relevant to the present case. In addition, as stated in the July 15, 2008 Warning Letter, UTLA has discretion regarding how to pursue grievances and other complaints from unit members. (See California Teachers Association and Oakland Education Association (Welch) (2006) PERB Decision No. 1850; Public Employees Union 1 (2005) PERB Decision No. 1780-M; College of the Canyons Faculty Association (Lynn) (2004) PERB Decision No. 1706.) In this case, UTLA filed grievances and pursued a discipline appeal on Adams' behalf. Those actions are still pending. Adams does not demonstrate how UTLA's representation with respect to these or other matters was arbitrary, discriminatory, or in bad faith. Accordingly, this allegation is dismissed.

Adams also alleges that UTLA breached the duty of fair representation when it denied Adams' grievance regarding seven days of missing filer pay. As stated in the July 15, 2008 Warning Letter, a union is not required to pursue grievances that it believes are unmeritorious. (Lynn,

supra, PERB Decision No. 1706.) The Warning Letter also noted that Adams was informed that a grievance on this issue was not timely because the alleged denial of pay occurred outside time frame for filing grievances. Adams was given the opportunity to appeal UTLA's decision not to pursue the grievance and he does not allege that he did so. Adams has not provided any additional information supporting this allegation. Therefore, it is dismissed for the reasons discussed in the July 15, 2008 Warning Letter.

Right to Appeal

Pursuant to PERB Regulations, you may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (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 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 _____

Eric J. Cu

Regional Attorney

Attachment

cc: Jesus E. Quinones

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
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July 15, 2008

John W. Adams

Re: John W. Adams v. United Teachers of Los Angeles
Unfair Practice Charge No. LA-CO-1339-E
WARNING LETTER

Dear Mr. Adams:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on April 3, 2008 by John W. Adams. On June 13, 2008, Adams filed an amended charge. Adams alleges that the United Teachers of Los Angeles (UTLA) violated the Educational Employment Relations Act (EERA)¹ by breaching its duty of fair representation.

UTLA is the exclusive representative of certificated personnel at the Los Angeles Unified School District (LAUSD). UTLA and LAUSD are parties to a Collective Bargaining Agreement (CBA) that contains a grievance procedure ending in binding arbitration. Adams is a certificated employee at LAUSD. He is credentialed to teach social studies.

On March 10, 2006, UTLA representative Paula Parr withdrew a grievance Adams filed over LAUSD's refusal to allow Adams to "assign standards" to students. She informed Adams that there was no policy allowing teachers to assign standards to students and that a teacher could only suspend students.

Between April and July 2006, LAUSD teacher Mr. Sekiyoba, who is African-American, ran for the position of Testing Coordinator. UTLA did not put Sekiyoba on the ballot. Adams ran for the position of Social Studies Department Chair. UTLA representative Karina "Dee" Segura collected the ballots but did not allow all unit members to vote. Tom Chavez won the election.

In July 2006, UTLA representative Bruce Williams declined to file a grievance on behalf of Adams for LAUSD's failure to give Adams an out-of-classroom assignment in retaliation for reporting ongoing corruption, incompetence, and racism. Williams stated that Adams was not entitled to an out-of-classroom assignment and LAUSD was free to assign such positions to whomever it wished. Williams also stated that he had already instructed Adams on how to file claims with LAUSD's Equal Opportunity Section for investigation.

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.

Adams alleges that another certificated employee, Robert Wang, attempted to file grievances regarding teaching assignments but that Williams would not agree to file those grievances. Williams instead suggested the Wang transfer to a different school.

On April 17, 2007, Adams filed a grievance regarding LAUSD's failure to comply with student discipline rules. On August 30, 2007, Adams asked Williams' the reasons why no Step 1 meeting was scheduled for the grievance. Williams stated that he would notify Adams when a meeting was scheduled. Williams also said "sorry you never heard of summer vacations but it happens all the time."

On August 30, 2007, Adams asked Williams' for advice about LAUSD's requirement that Adams undergo a psychiatric evaluation prior to returning to work for the 2007-2008 semester. Williams advised Adams not to call in sick and not to sign an application for leave of absence by LAUSD.

In January 2008, LAUSD issued Adams a Notice of Unsatisfactory Acts and a five-day suspension. Williams stated that he would appeal the suspension through the disciplinary appeal process.

On January 10, 2008, Williams stated that he could not file a grievance over LAUSD's failure to report seven days of "filer time" that Adams accrued in January 2007. Williams stated that grievances must be filed within 15 days and that, typically, "filer time" is not reported. He suggested that Adams resolve the matter with an LAUSD payroll specialist. Williams' also stated that he would not file a grievance over LAUSD's requirement that Adams have the psychiatric evaluation prior to returning to work because he believed that LAUSD has the authority to do so. Williams' also stated that he was having trouble scheduling a meeting regarding Adams' April 17, 2007 grievance. Williams stated that he would arrange to meet with LAUSD to discuss the grievance at the same time as the already scheduled discipline appeal hearing.

On January 18, 2008, Williams filed a grievance over LAUSD's failure to compensate Adams for seven days of filer pay in January 2007.

On January 28, 2008, Williams' stated that he would discuss LAUSD's psychiatric evaluation requirement with them during the discipline appeal hearing.

On March 12, 2008, Williams again stated that he would hold a meeting for the student discipline policy grievance at the same time as the appeal hearing for Adams' January 2008 Notice of Unsatisfactory Acts. Williams also informed Adams that the grievance over the seven days of "filer time" was denied by LAUSD because it was untimely.

Adams had requested that Williams address LAUSD's violation of the process for issuing Notices of Unsatisfactory Acts. Williams stated that he would address Adams' issues during Adams' discipline appeal hearing.

On March 25, 2008, UTLA denied Adams' earlier request to reimburse his legal fees for a charge filed with PERB.

On March 26, 2008, UTLA informed Adams that its Grievance Review Committee (GRC) would not be pursuing his grievance regarding the denial of "filer pay" any further and informed Adams of his right to appeal the GRC's decision.

On April 24, 2008, Adams contacted UTLA President A.J. Duffy requesting that UTLA reconsider its decision not to reimburse Adams for legal fees incurred in filing a PERB charge against LAUSD. Adams also stated that he did not believe Williams could adequately represent him and requested assistance from another UTLA representative.

Discussion:

Adams contends that UTLA denied him the right to fair representation guaranteed by EERA section 3544.9 and thereby violated section 3543.6(b). 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.) In other words to state a prima facie case for an unfair labor practice, Adams must demonstrate that UTLA's conduct was arbitrary, discriminatory, or in bad faith. (Los Banos Teachers Association (Ulmschneider) (2007) PERB Decision No. 1922.)

In addition, 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." Adams' 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.)

A. Statute of Limitations

Adams' burden also includes alleging facts showing that the unfair practice charge was timely filed; i.e., that the alleged unfair practice occurred no more than six months prior to the filing of the charge. (Los Angeles Unified School District (2007) PERB Decision No. 1929; City of Santa Barbara (2004) PERB Decision No. 1628-M.) PERB is prohibited 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, (Coachella Valley Mosquito and Vector

Control District v. Public Employment Relations Board (2005) 35 Cal.4th 1072.) 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.)

In this case, the charge was first filed on April 3, 2008. This means that the statutory period extends back to October 3, 2007. Several of Adams' allegations are for conduct by UTLA occurring before October 3, 2007. Therefore, to the extent that Adams claims conduct occurring outside the statutory period as part of this charge, he has not established that such claims were timely filed.

B. Allegations of Election Misconduct

Adams alleges that UTLA ran the April-July 2006 elections for Testing Coordinator and for Social Studies Department Chair improperly. As stated above, the alleged conduct occurred outside of the statutory period and is therefore untimely. Even if the allegations were timely, there is insufficient information to state a prima facie case. For example, Adams does not explain what UTLA's role was in managing the elections in question or what UTLA did to fail in this role. Adams states that not all teachers were permitted to vote for the Social Studies Chair position, but does not establish what teachers were entitled to vote. Nor does Adams establish how UTLA's conduct impacted the results of the elections. Accordingly, Adams does not establish that UTLA's actions or inactions were arbitrary, discriminatory, or in bad faith. (Los Banos Teachers Association (Ulmschneider), *supra*, PERB Decision No. 1922.)

In addition, it is unclear from the charge whether the elections were for positions within the UTLA's internal administration, or whether UTLA simply played a role in managing elections for LAUSD positions. PERB has held that matters concerning internal union affairs are immune from review by PERB, unless they have a substantial impact on the relationship of unit members to their employer so as to give rise to a duty of fair representation. (Service Employees International Union, Local 99 (Kimmett) (1979) PERB Decision No. 106; California State Employees Association (Hutchinson and Laosantos) (1998) PERB Decision No. 1304-S.) Adams does not provide sufficient facts to determine whether the elections concerned solely internal UTLA activities. If so, then Adams does not establish how the loss of a UTLA position had a substantial impact on his relationship with LAUSD. Accordingly, this allegation does not state a prima facie case.

C. Allegations Regarding Grievance Handling

Adams alleges that the Union breached its duty of fair representation by failing to represent him properly during certain grievances. 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 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.

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.)

Adams alleges that UTLA breached the duty of fair representation by withdrawing a 2006 grievance filed over LAUSD's refusal to allow him to "assign standards" to students. As stated above, Adams does not establish that this allegation is timely filed. Even if Adams' claim over this grievance was timely, there is insufficient information to conclude that UTLA breached the duty of fair representation. Adams contends that the grievance was "legitimate," but does not provide facts to support this conclusion. For example, Adams does not clarify what it means to "assign standards," nor does he demonstrate that teachers had the ability to do so. Accordingly, he does not meet his burden of providing a "clear and concise statement" of facts supporting his claim. (PERB Regulation 32615(a).) Adams' mere legal conclusions are insufficient. (See State of California (Department of Food and Agriculture), supra, PERB Decision No. 1071-S.) Without more information, it cannot be said that UTLA abused its discretion deciding not pursue the grievance further. In other words, Adams does not demonstrate that UTLA's decision was arbitrary, discriminatory, or made in bad faith. (Los Banos Teachers Association (Ulmschneider), supra, PERB Decision No. 1922.)

Adams next alleges that, in July 2006, UTLA improperly refused to file a grievance over being denied an out-of-class assignment in retaliation of having complained about LAUSD's ongoing incompetence and discrimination. Again, Adams does not establish that this allegation was timely filed. Even if it was timely, Adams does not establish that UTLA's decision not to pursue the grievance was arbitrary, discriminatory, or made in bad faith. (Los Banos Teachers Association (Ulmschneider), supra, PERB Decision No. 1922.) For example, Adams does not address what LAUSD's alleged misconduct was and how it violated any specific section of the CBA. According to the facts provided, UTLA representative Williams informed Adams that it may be more appropriate to file a complaint with LAUSD's Equal Opportunity Section, and instructed Adams on how to do so. This suggests that the CBA may not address some of the racial discrimination and retaliation issues Adams wished to be part of the grievance. There is insufficient information to conclude that Williams' decision was arbitrary, discriminatory, or in

bad faith. (Los Banos Teachers Association (Ulmschneider), supra, PERB Decision No. 1922.)

Adams next alleges that UTLA is not properly representing him in his April 17, 2007 grievance regarding student discipline policies. Specifically, Adams alleges that UTLA did not follow the timelines set forth in the grievance procedure and took too much time to arrange the Step 1 meeting. In Service Employees International Union, Local 250 (Hessong) (2004) PERB Decision No. 1693-M, the Board held that it did not breach the duty of fair representation for a union to take two years to resolve a grievance where the union preserved its timelines and the length of the grievance did not foreclose the employee's ability to obtain a remedy. Similarly in this case, Williams acknowledged that he had difficulty in scheduling a date with LAUSD for the Step 1 meeting but informed Adams that the meeting would take place at the same time as the hearing appealing Adams' January 18, 2008 disciplinary five-day suspension. Adams does not demonstrate that Williams' actions foreclosed Adams' ability to achieve a favorable result from the grievance. Thus, he does not demonstrate that UTLA's actions were arbitrary, discriminatory, or in bad faith. (Los Banos Teachers Association (Ulmschneider), supra, PERB Decision No. 1922.)

Adams next alleges that UTLA failed to represent him properly regarding a grievance over LAUSD's denial of "filer time" pay. A union is not required to pursue grievances that it reasonably believes are unmeritorious. (College of the Canyons Faculty Association (Lynn) (2004) PERB Decision No. 1706.) Moreover, a disagreement over whether a grievance should be taken to arbitration does not, in itself, establish a breach of the duty of fair representation. (SEIU Local 1000, CSEA (Burnett) (2007) PERB Decision No. 1914-S.) In this case, on January 10, 2008, Williams informed Adams that he would not file a grievance over this issue because LAUSD's alleged denial of "filer pay" occurred in January 2007 and grievances must be filed within 15 days of the wrongdoing. Nevertheless, at Adams' continued insistence, Williams filed the grievance on January 18, 2008. LAUSD denied the grievance as untimely. On March 26, 2008 the UTLA GRC informed Adams that it would not elevate the grievance to arbitration and offered Adams the ability to appeal its determination. Adams contends that UTLA should have "defended the grievance vigorously," but does not provide sufficient information to conclude that UTLA's determination not to pursue this grievance was arbitrary, discriminatory, or made in bad faith. (Los Banos Teachers Association (Ulmschneider), supra, PERB Decision No. 1922.)

Adams also alleges that UTLA breached its duty of fair representation by failing to file a grievance over LAUSD's requirement that he undergo a psychiatric evaluation prior to returning to work. Williams' stated that he would address this issue during Adams' appeal hearing. The duty of fair representation does not require an union to file a grievance where it reasonably believes that the issue can be resolved outside the grievance process. (College of the Canyons Faculty Association (Lynn) (2004) PERB Decision No. 1706; International Association of Firefighters Local 55 (Waqia) (2004) PERB Decision No. 1621-M.) In this case, Adams does not demonstrate that William's decision to address the psychiatric evaluation requirement during Adams' disciplinary appeal hearing was arbitrary, discriminatory, or made in bad faith. (Los Banos Teachers Association (Ulmschneider), supra, PERB Decision

No. 1922.) Rather, since Adams contends that both the evaluation requirement and the Notice of Unsatisfactory Acts were retaliatory, it may have been reasonable to address both of the issues in the same forum.

Similarly, Adams does not demonstrate that Williams' decision not to pursue a grievance over LAUSD's issuance of a Notice of Unsatisfactory Acts breached the duty of fair representation. Williams stated that, because the Notice was related to the suspension, he believed it that these issues should be addressed together through the discipline appeals process. He explained that UTLA does not typically file a separate grievance in these situations since it could all be resolved during the appeal hearing. Adams does not establish how Williams' determination was arbitrary, discriminatory, or made in bad faith. (Los Banos Teachers Association (Ulmschneider), *supra*, PERB Decision No. 1922.)

Adams also alleges that Williams failed to offer certain documents as evidence. It is not clear where Adams contends Williams should have presented the documents. Assuming that Adams is alleging that Williams failed to present certain evidence in a grievance, that is not sufficient to demonstrate a breach of the duty of fair representation. The Board has held that a union's failure to pursue a grievance in the manner requested by the grievant, including not calling witnesses the grievant believed were relevant, was insufficient to demonstrate a violation of the union's duty. (SEIU Local 790 (Paez) (2005) PERB Decision No. 1774-M.) Accordingly, this allegation does not state a *prima facie* case.

Adams also alleges that UTLA breached its duty of fair representation by failing to grant his request for a representative other than Williams'. The duty of fair representation does not obligate a union to provide an employee with the representative of his or her choice. (American Federation of Teachers College Guild, Local 1521 (Saxton) (1995) PERB Decision No. 1109.) A union's decision to appoint a representative is an internal union matter not subject to the duty of fair representation. (*Ibid.*) Accordingly, this allegation does not state a *prima facie* case.

D. Allegations Regarding Reimbursement for Legal Expenses

Adams also alleges that UTLA breached its duty of fair representation by failing to reimburse him for the legal expenses incurred filing an unfair practice charge number LA-CE-5177-E against LAUSD. 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.) The duty of fair representation does not attach to an exclusive representative in extra-contractual proceedings before government agencies, including PERB. (*Ibid.*) Adams has not established that UTLA had a duty to represent Adams in PERB unfair practice charge number LA-CE-5177-E. Accordingly, this allegation does not state a *prima facie* case.

E. General Allegations

Adams makes a number of general allegations such as that UTLA "blocked much needed mayoral reform of LAUSD," or that UTLA fails to expose corruption at LAUSD or retaliation against teachers. Adams provides no facts supporting these allegations and accordingly fails to provide a "clear and concise statement" of facts demonstrating a violation of the duty of fair representation. (PERB Regulation 32615(a).) Therefore, these allegations do not state a prima facie case.

Adams also alleges that UTLA does not provide adequate training on how to file a "Williams Complaint," apparently referencing the complaint process that was part of a settlement agreement and subsequent legislation in the Williams v. State of California lawsuit, filed in the Superior Court of San Francisco, Case Number 312336. Adams does not establish either that "Williams Complaints" are a forum over which the union exclusively controls the means to a remedy, or what specific actions or inactions by UTLA are said to have violated the duty of fair representation. (See California State Employees Association (Parisi), supra, PERB Decision No. 733-S.) For these reasons, this allegation does not state a prima facie case.

F. Allegations of Misconduct Towards Other Certificated Personnel

Adams also apparently alleges that UTLA breached its duty to represent other certificated personnel such as Mr. Sekiyoba and Robert Wang. These individuals were not named as charging parties and did not sign the charge form. PERB Regulation 32615(a) requires that a charge be signed by the charging party or his or her authorized agent. (See also Riverside County Office Teachers Association, CTA/EA (McAlpine, et al.) (2000) PERB Decision No. 1401, fn. 1.) Sekiyoba and Wang did not comply with the requirements to be charging parties in this case, and Adams has not established that he is authorized to represent them. Thus, Adams is the only charging party in this case.

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.

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If no amended charge or withdrawal is received before July 23, 2008, the charge will be dismissed. If there are any questions, please contact the undersigned at the above telephone number.

Sincerely,

~~Eric J. Cu~~
Regional Attorney

EC