

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



LORENIA PAYNE,

Charging Party,

v.

CALIFORNIA SCHOOL EMPLOYEES  
ASSOCIATION & ITS CHAPTER 410,

Respondent.

Case No. LA-CO-1351-E

PERB Decision No. 2029

May 27, 2009

Appearances: Lorenia Payne, on her own behalf; Charmaine L. Huntting, Staff Attorney, for California School Employees Association & its Chapter 410.

Before McKeag, Neuwald and Dowdin Calvillo, Members.

DECISION

NEUWALD, Member: This case is before the Public Employment Relations Board (Board) on appeal by Lorenia Payne (Payne) to a Board agent's dismissal (attached) of her unfair practice charge. Payne alleged that the California School Employees Association & its Chapter 410 (CSEA) violated the Educational Employment Relations Act (EERA)<sup>1</sup> by breaching its duty of fair representation when it failed to file a grievance over Payne working outside her classification.

The Board reviewed the entire record including the unfair practice charge, the amended charge, the Board agent's warning and dismissal letters, Payne's appeal,<sup>2</sup> and CSEA's response to the appeal. The Board finds the warning and dismissal letters well reasoned and a correct

<sup>1</sup> EERA is codified at Government Code section 3540 et seq.

<sup>2</sup> Payne's request for oral argument is denied.

statement of the law. The Board thereby adopts the warning and dismissal letters as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. LA-CO-1351-E is hereby DISMISSED  
WITHOUT LEAVE TO AMEND.

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Members McKeag and Dowdin Calvillo 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  
Fax: (213) 736-4901



October 2, 2008

Lorenia Payne, Health Clerk Tech.  
Moreno Valley Unified School District

Re: Lorenia Payne v. California School Employees Association & its Chapter 410  
Unfair Practice Charge No. LA-CO-1351-E  
**DISMISSAL LETTER**

Dear Ms. Payne:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on July 16, 2008. Lorenia Payne (Payne or Charging Party) alleges that the California School Employees Association & its Chapter 410 (Union or Respondent) violated section 3543.6 of the Educational Employment Relations Act (EERA or Act)<sup>1</sup> by breaching the duty of fair representation.

Charging Party was informed in the attached Warning Letter dated September 19, 2008, that the above-referenced charge did not state a prima facie case. She was advised that, if there were any factual inaccuracies or additional facts that would correct the deficiencies explained in that letter, she should amend the charge. Payne was further advised that, unless she amended the charge to state a prima facie case or withdrew it prior to September 29, 2008, the charge would be dismissed. On that date, she filed an amended charge.

Payne alleges that the Union breached the duty of fair representation by failing to file a grievance over Payne's performing work outside her classification. Payne provides a detailed account of her communications with her employer, the Moreno Valley Unified School District (District), and the Union regarding her efforts to be reclassified, with back pay, from a Health Clerk Technician to a Health Clerk Technician-Bilingual. Payne includes conversations with Union representatives that suggested those representatives were unfamiliar with the grievance process and disfavored having job classifications that required the use of bilingual skills.

Payne also alleges that, on January 23, 2008, the District and the Union issued a joint statement informing Payne that there was no classification that performed job duties Payne alleged to have performed and that the Union and the District would negotiate to create a new classification for her. On March 19, 2008, the District informed Payne that she was being reclassified to a new classification, a Health Clerk Technician-Bilingual, with increased salary, retroactive to November 28, 2007. Payne stated that she had been performing bilingual duties

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<sup>1</sup> 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](http://www.perb.ca.gov).

prior to November 28, 2007, but did not have any paperwork or other evidence to prove this claim.

Payne was informed in the September 19, 2008 Warning Letter that 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." The Charging Party's burden includes 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." The charging party's 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.) 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 filed on July 16, 2008. This means that the statutory period extends back until January 16, 2008. Any allegations of wrongdoing by the Union occurring prior to January 16, 2008, are therefore untimely. In the amended charge, Payne makes several allegations that the Union failed to take appropriate action regarding her working outside her classification at times prior to January 16, 2008. To the extent that Payne alleges the Union breached its duty of fair representation by actions taken prior to January 16, 2008, Payne does not establish that these allegations were timely filed and the allegations must therefore be dismissed.

Payne appears to allege that, although the Union was able to negotiate the creation of a new classification with higher salary for Payne, the Union should have also filed a grievance to have her salary increased retroactively to a date prior to November 28, 2007. As stated in the September 19, 2008 Warning Letter, the duty of fair representation does extend to grievance handling, but Payne must show that the Union's actions or inactions regarding a grievance were arbitrary, discriminatory, or in bad faith. (See Los Banos Teachers Association (Ulmschneider) (2007) PERB Decision No. 1922.) A union is not required to process a grievance where it believes that "the chances for success are minimal." (United Teachers of Los Angeles (Collins) (1982) PERB Decision No. 258.) In addition, a union is not required to pursue a grievance that it reasonably believes is unmeritorious or can be resolved outside the grievance process. (College of the Canyons Faculty Association (Lynn) (2004) PERB Decision No. 1706.)

Payne does not provide information to establish that the Union's decision not to file a grievance on this issue was arbitrary, discriminatory, or made in bad faith. (See Los Banos Teachers Association (Ulmschneider) (2007) PERB Decision No. 1922.) As noted above, the Union negotiated the creation of a new classification for Payne with a higher salary retroactive

several months. In addition Payne admitted that she did not have evidence supporting her claims of performing bilingual work prior to November 28, 2007. Based on this information, the Union may have reasonably believed that a grievance would have been unsuccessful and that negotiating with the District would achieve a more favorable result. Accordingly, Payne does not establish that the Union breached the duty of fair representation by not filing a grievance.

For these reasons, Payne does not establish that the Union breached its duty of fair representation by not filing a grievance over Payne working outside her classification. Accordingly, this allegation is dismissed.

In the original charge, Payne alleged that the Union violated the Higher Education Employer-Employee Relations Act (HEERA) and the Ralph C. Dills Act (Dills Act). Payne was informed in the September 19, 2008 Warning Letter that these allegations did not state a prima facie case because she did not establish either that she was a higher education employee or an employee of the State. Payne did not provide any additional information regarding these allegations. Accordingly, the allegations are dismissed for the reasons discussed in the September 19, 2008 Warning Letter.

#### Right to Appeal

Pursuant to PERB Regulations,<sup>2</sup> Charging Party 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. (Cal. Code Regs, tit. 8, sec. 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. (Cal. Code Regs, tit. 8, secs. 32135(a) and 32130; see also Gov. Code, sec. 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 PERB 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. (Cal. Code Regs, tit. 8, secs. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 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

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

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. (Cal. Code Regs, tit. 8, sec. 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 Cal. Code Regs., tit. 8, sec. 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. (Cal. Code Regs, tit. 8, sec. 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. (Cal. Code Regs, tit. 8, sec. 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: Charmaine Huntting

**PUBLIC EMPLOYMENT RELATIONS BOARD**

Los Angeles Regional Office  
3530 Wilshire Blvd., Suite 1435  
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September 19, 2008

Lorenia Payne, Health Clerk Tech.

Re: Lorenia Payne v. California School Employees Association & its Chapter 410  
Unfair Practice Charge No. LA-CO-1351-E  
**WARNING LETTER**

Dear Ms. Payne:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on July 16, 2008. Lorenia Payne (Payne or Charging Party) alleges that the California School Employees Association & its Chapter 410 (Union or Respondent) violated section 3543.6 of the Educational Employment Relations Act (EERA or Act)<sup>1</sup> by breaching the duty of fair representation. Payne also alleges that the Union violated the Higher Education Employer-Employee Relations Act (HEERA) and the Ralph C. Dills Act (Dills Act).

Payne is employed at the Moreno Valley Unified School District (District) as a Health Clerk Technician. The Union is the exclusive representative of the classified bargaining unit at the District, which includes the Health Clerk Technician classification. The Union and the District are parties to a Collective Bargaining Agreement (CBA) that contains a grievance procedure culminating in binding arbitration.

In May 2007, Payne informed Union representative Gary Snyder that she had been working outside her designated job classification since 2005. Payne stated her belief that she should receive bilingual pay. Payne then stated that she discussed the matter with Union President Lequice Juckes, but that Juckes had not assisted her. Snyder suggested that Payne contact her supervisor and request additional compensation. Snyder also stated that he would speak with Juckes.

On July 30, 2007, Payne requested that the District provide her with additional compensation for performing bilingual duties. On September 12, 2007, Payne attended a meeting over this issue with Juckes and a District representative. The Union and the District discussed Payne's additional duties on other occasions as well. The Union declined to file a grievance under the CBA.

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<sup>1</sup> 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](http://www.perb.ca.gov).

At a time not specified by the parties, Payne received additional compensation from the District for working outside of her classification. Payne was also moved up one range in the salary scale and reclassified as a Bilingual Health Technician.

Discussion:

Payne alleges that the Union denied her the right to fair representation guaranteed by EERA section 3544.9 and thereby violated section 3543.6(b). The duty of fair representation imposed on the exclusive representative extends to grievance handling. (Fremont Teachers Association (King) (1980) PERB Decision No. 125; United Teachers of Los Angeles (Collins) (1982) PERB Decision No. 258.) However, unions generally have discretion regarding how far 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.) Therefore, in order to state a prima facie violation of this section of EERA, Payne must show that the Union's conduct was arbitrary, discriminatory or in bad faith. (Los Banos Teachers Association (Ulmschneider) (2007) PERB Decision No. 1922.) 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, 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, 1274; see also, Robesky v. Quantas Empire Airways Limited (9th Cir. 1978) 573 F.2d 1082.)

The Board has determined that a union is not required to pursue grievances where it reasonably believes either that the grievance is unmeritorious or 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.) A disagreement over how far to pursue a grievance is not, in itself, sufficient to establish a breach of the duty of fair representation. (SEIU Local 1000, CSEA (Burnett) (2007) PERB Decision No. 1914-S.)

Moreover, 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." The charging party's burden includes alleging the "who, what, when, where and how" of an unfair practice. (State of California (Department of Food and Agriculture) (1994) PERB Decision No. 1071-S, citing United Teachers-Los Angeles (Ragsdale) (1992) PERB Decision No. 944.) Mere legal conclusions are not sufficient to state a prima facie case. (Ibid.; Charter Oak Unified School District (1991) PERB Decision No. 873.)

In the present case, Payne alleges that the Union should have filed a grievance over her performing work outside her classification. However, there is insufficient information to conclude that the Union's decision to meet with the District instead of filing a grievance was arbitrary, discriminatory, or made in bad faith. (See Los Banos Teachers Association (Ulmschneider) (2007) PERB Decision No. 1922.) In addition, Payne was ultimately reclassified to reflect her additional job duties and moved higher on the salary scale. This further suggests that it was reasonable for the Union to address Payne's concerns in the manner that it did. Accordingly, Payne does not establish that the Union breached its duty of fair representation.

In addition to alleging a violation of the EERA, Payne also alleges that the Union violated HEERA and the Dills Act.

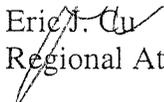
HEERA concerns the relationship between higher education employers, higher education employees, and employee organizations that are composed of higher education employees. A higher education employee is defined by HEERA as "any employee of the Regents of the University of California, the Directors of the Hastings College of Law, or the Trustees of the California State University." (HEERA, § 3562(e).)

The Dills Act concerns the relationship between the state, employees of the state, and employee organizations that are composed of state employees. A state employee is defined by the Dills Act as, with certain exclusions, "any civil service employee of the state, and the teaching staff of schools under the jurisdiction of the Department of Education or the Superintendent of Public Instruction[.]"

Payne does not establish that she is either a higher education employee as defined by HEERA or an employee of the state as defined by the Dills Act. Payne also does not establish that the Union is composed of either of higher education employees or state employees. Instead Payne alleges that she is an employee of the District, a public school, which is governed by EERA. Accordingly, the allegations that the Union violated HEERA or the Dills Act do not state a prima facie case. (See California School Employees Association & its Chapter 374 (Wyman) (2007) PERB Decision No. 1903 (dismissing allegations that a union violated HEERA, the Dills Act, and the Myers-Milias-Brown Act, where the charging party was employed by a school district).)

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, Charging Party may 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 an authorized agent of 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 an amended charge or withdrawal is not filed on or before September 29, 2008, PERB will dismiss your charge. If there are any questions, please contact the undersigned at the above telephone number.

Sincerely,

  
Regional Attorney

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