

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



MAYORO NIANG,

Charging Party,

v.

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION & ITS CHAPTER 3,

Respondent.

Case No. LA-CO-1535-E

PERB Decision No. 2319

July 12, 2013

Appearances: Mayoro Niang, on his own behalf; California School Employees Association by Michael R. Clancy, Chief Counsel, for California School Employees Association & its Chapter 3.

Before Martinez, Chair; Winslow and Banks, Members.

DECISION¹

WINSLOW, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Mayoro Niang (Niang) of a Board agent's dismissal (attached) of his unfair practice charge. The charge alleged that the California School Employees Association & its Chapter 3 breached its duty of fair representation under the Educational Employment Relations Act (EERA)² by failing to adequately communicate with Niang; making it difficult for him to determine who his union representative was; by failing to return his telephone calls; and, by failing to process all of Niang's workplace complaints and issues.

¹ PERB Regulation 32320(d), provides in pertinent part: "Effective July 1, 2013, a majority of the Board members issuing a decision or order pursuant to an appeal filed under section 32635 (Board Review of Dismissals) shall determine whether the decision or order, or any part thereof, shall be designated as precedential." Having met none of the criteria enumerated in the regulation, the decision herein has not been designated as precedential. (PERB Regs. are codified at Cal. Code of Regs., tit. 8, § 31001 et seq.)

² EERA is codified at Government Code section 3540 et seq.

The Board agent found that the charge failed to state a prima facie violation of the duty of fair representation.

The Board has reviewed the dismissal and the record in light of Niang's appeal and the relevant law. Based on this review, we find the dismissal and warning letters to be well-reasoned, adequately supported by the record, and in accordance with applicable law. Accordingly, the Board adopts the dismissal and warning letters as the decision of the Board itself, supplemented by the discussion below.

DISCUSSION

Pursuant to PERB Regulation 32635(a),³ an appeal from dismissal must:

- (1) State the specific issues of procedure, fact, law or rationale to which the appeal is taken;
- (2) Identify the page or part of the dismissal to which each appeal is taken;
- (3) State the grounds for each issue stated.

Thus, an appeal must sufficiently place the Board and the respondent "on notice of the issues raised on appeal" in order to comply with Regulation 32635(a). (*State Employees Trades Council United (Ventura, et al.)* (2009) PERB Decision No. 2069-H.) An appeal that merely reiterates facts alleged in the unfair practice charge does not comply with PERB Regulation 32635(a). (*United Teachers of Los Angeles (Pratt)* (2009) PERB Order No. Ad-381; *Contra Costa County Health Services Department* (2005) PERB Decision No. 1752-M.)

The appeal in this case primarily consists of a restatement of facts alleged in the original and amended charges. Niang takes PERB to task for failing to provide him adequate assistance

³ PERB Regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

in filing his charges and for not providing him sufficient time to amend his charge. However, Niang's appeal fails to identify specific issues of procedure, fact, law or rationale to which his appeal is taken.⁴ For these reasons, the dismissal is upheld.

ORDER

The unfair practice charge in Case No. LA-CO-1535-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chair Martinez and Member Banks joined in this Decision.

⁴ The Board agent granted four extensions of time for Niang to file his amended charge.

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
700 N. Central Ave., Suite 200
Glendale, CA 91203-3219
Telephone: (818) 551-2809
Fax: (818) 551-2820



December 19, 2012

Mayoro Niang

Re: *Mayoro Niang v. California School Employees Association & its Chapter 3*
Unfair Practice Charge No. LA-CO-1535-E
DISMISSAL LETTER

Dear Mr. Niang:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on August 8, 2012. Mayoro Niang (Niang or Charging Party) alleges that the California School Employees Association & its Chapter 3 (CSEA or Respondent) violated the Educational Employment Relations Act (EERA or Act).¹

Charging Party was informed in the attached Warning Letter dated October 3, 2012, that the above-referenced charge did not state a prima facie case. Charging Party was advised that, if there were any factual inaccuracies or additional facts that would correct the deficiencies explained in that letter, Charging Party should amend the charge. Charging Party was further advised that, unless Charging Party amended the charge to state a prima facie case or withdrew it on or before October 12, 2012, the charge would be dismissed. Charging Party requested and obtained extensions of time and on November 21, 2012, Charging Party filed a First Amended Charge.

In the First Amended Charge, Charging Party provides a copy of his November 9, 2012 pay stub as well as a written "Amendment/summary of pleading" containing many assertions duplicative of the information provided in the original charge. The Proof of Service attached to the Amended Charge is insufficient because it does not include the name and address where the documents were served. However, setting aside the procedural defect, the essence of Charging Party's Amended Charge is that:

1. Charging Party needs more time to respond to the Warning Letter because he needs to find an attorney to review the Warning Letter and Charging Party is currently delayed in lengthy workers compensation issues.

¹ EERA is codified at Government Code section 3540 et seq. The text of the EERA and PERB Regulations may be found at www.perb.ca.gov.

2. CSEA is very difficult to contact and unresponsive. Nobody knows who is the real CSEA representative and people pretend to be the CSEA representative.² CSEA representatives blame other retired representatives for mistakes. CSEA representatives are inexperienced and refuse to return calls, refuse to put forward all of Charging Party's complaints and issues.³ CSEA has caused Charging Party's complaints to stop moving.⁴
3. The acts or inaction of "Kawnee Moreno, Becky Shaires [and] Hall, all union representatives, was without rational basis or devoid of honest judgment."

As explained in the October 3, 2012 Warning Letter, many of the allegations contained in the original charge appear to be outside the statute of limitations. The Amended Charge fails to provide dates which would demonstrate the allegations are timely, and, therefore, the amended charge is not timely filed. Nonetheless, the information provided in the Amended Charge, even if timely, does not establish that CSEA failed to fulfill its duty to fairly represent Charging Party. As noted in the Warning Letter, to demonstrate CSEA did not meet its duty of fair representation, the Charging Party must allege facts demonstrating CSEA's conduct was arbitrary, discriminatory, or in bad faith or that CSEA's action or inaction was without a

² Charging Party alleges that Becky Shaires (Shaires) just listened to Charging Party but she should have told Charging Party that she was not a CSEA representative. Charging Party alleges Shaires lied to Tre'shawn Hall (Hall) when Shaires told Hall that she had told Charging Party that she was not the union representative. Charging Party also alleges Mrs. Smiley pretended to be the school site union representative.

³ Charging Party alleges Hall did not want to include all of Charging Party's complaints against the District and that if Hall did not like one issue in Charging Party's complaint, he would have to eliminate that part or Hall would not be part of the meeting. Charging Party also alleges CSEA did not help Charging Party with his complaint that administrators use other assistants to babysit their children at the expense of Special Education Students who are left to wander around the school. Charging Party alleges he earns much less than other individuals who do less work and others are promoted even though they do not do anything or tamper with the school system. Charging Party asserts that because he is contributing union dues, everything he "put[s] on the table should be allowed." Charging Party also asserts he "has the right not only to a wage back payment for the time lost but [also] union payment due refund" because the union was "hard to find or the same union is being misrepresented."

⁴ Charging Party reported an injury and Sylvia did not like it, she yelled and told Charging Party to report it to the School District at once. Sylvia told Charging Party he should not contest his injury. Sylvia told Charging Party to "get any doctor to get me off work because she wanted to accommodate staff who [were] discriminating against me because of my disability and racial group." "Hall noticed that Sylvia was getting away of my complain[t] [and] [s]he did not want to deal with it. She created a situation in everything stopped moving [sic]."

rational basis or devoid of honest judgment. (*Reed District Teachers Association, CTA/NEA (Reyes)* (1983) PERB Decision No. 332, p. 9, quoting *Rocklin Teachers Professional Association (Romero)* (1980) PERB Decision No. 124.) The amended charge does not provide such facts. For example, the allegation that Charging Party had to contact many representatives at CSEA, and that various people at CSEA were inexperienced or refused to pursue all of Charging Party's complaints, does not demonstrate that CSEA's action or inaction lacked rational basis or was devoid of honest judgment. The allegation that Hall created a situation where "everything stopped moving" similarly lacks information demonstrating CSEA's action or inaction lacked rational basis or was devoid of honest judgment. The allegation that Mrs. Smiley and Becky Shaires pretended to be school site union representatives fails to demonstrate CSEA's action or inaction concerning the situation lacked rational basis or was devoid of honest judgment. Finally, Charging Party's statement that the acts or inaction of "Kawnee Moreno, Becky Shaires [and] Hall, all union representatives, was without rational basis or devoid of honest judgment" lacks specific facts supporting the conclusory statement.

On December 3, 2012, in response to the Amended Charge's statement that Charging Party needed more time, the undersigned Board agent sent a letter to Charging Party granting Charging Party an extension of time to December 17, 2012 to withdraw or further amend the charge. The letter also noted that the Board agent had previously granted Charging Party three extensions of time to amend the charge.

On December 13, 2012, Charging Party filed letters stating, "I am doing everything in my power to get help" in responding to the Warning Letter. Charging Party requested more time to respond, until after his "worker compensation issues are solved." However, Charging Party did not request a specific extension of time, with a date certain deadline, nor did Charging Party provide any further explanation as to why good cause exists to grant such an extension.

The original and amended charges fail to state a prima facie case and the charge is hereby dismissed based on the facts and reasons set forth herein and in the October 3, 2012 Warning Letter.

Right to Appeal

Pursuant to PERB Regulations,⁵ 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, § 32635, subd. (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.

⁵ PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (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, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 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. (Cal. Code Regs., tit. 8, § 32635, subd. (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, § 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, § 32135, subd. (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, § 32132.)

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

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Sincerely,

M. SUZANNE MURPHY
General Counsel

By _____
Mary Weiss
Senior Regional Attorney

Attachment

cc: David J. Dolloff, Staff Attorney, California School Employees Association

PUBLIC EMPLOYMENT RELATIONS BOARD

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October 3, 2012

Mayoro Niang

Re: *Mayoro Niang v. California School Employees Association & its Chapter 3*
Unfair Practice Charge No. LA-CO-1535-E

WARNING LETTER

Dear Mr. Niang:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on August 8, 2012. Mayoro Niang (Niang or Charging Party) alleges that the California School Employees Association & its Chapter 3 (CSEA or Respondent) violated the Educational Employment Relations Act (EERA or Act).¹

Charging Party is an Instructional Assistant. He is employed by the Glendale Unified School District in a bargaining unit represented by CSEA. Charging Party's unfair practice charge consists of two pay stubs, dated July 10 and June 25, 2012, and a 33 page single spaced narrative regarding a multitude of events alleged to have occurred at the workplace when there was "no union rep[resentative] around to sort it out."

In the order presented, the events alleged in the charge are:

- [The District] made Instructional Assistants do work which is not in their job description.
- Suzan, another Instructional Assistant, became frustrated and yelled at Charging Party. Suzan is lazy and sleeps in the classroom, she goes grocery shopping in her working time, she loses class worksheets, and the teacher knows about it and does nothing.
- Charging Party has to impose discipline on students because the teacher, who is supposed to impose discipline, does not do so.
- Autistic students are running outside of the school, on the street and without supervision.
- Instructional Assistants are being kicked out of the classroom.
- Teachers have personal problems that do not belong at the school.
- Teachers retaliate against Instructional Assistants if a problem arises and a Teacher's Assistant mentions a teacher's name.

¹ EERA is codified at Government Code section 3540 et seq. The text of the EERA and PERB Regulations may be found at www.perb.ca.gov.

- You don't know who [at the union] to contact and Becky Shaires, Secretary of the Director in charge of Classified Staff takes the information and nothing happens.
- Becky Shaires announces herself as the in house union representative but the real representative is Letitia Munguia and she doesn't know who Becky Shaires is.
- Mrs. Smiley is the school site union representative but no one knows about her. Charging Party has never seen her do anything about workers' issues and she only works on getting herself elected to union office.
- Most Instructional Assistants are afraid to speak out when they see something and they are abused.
- No union members are hired, only non-union members are hired and they don't know what to do, they don't get instructions and they are left on their own. They start to get away with doing nothing and they push their personal problems on Charging Party. They don't help students and they leave for their second job before the work hour is done. They ask Charging Party to complete their tasks but Charging Party asked to have tasks removed because Charging Party needs some rest. Teachers don't say anything about this. New Assistants constantly complain about lack of benefits but they are paid more than staff with benefits and could use part of that pay to get their own benefits.
- In a case of child molestation that Charging Party states might be too old to qualify for a complaint, Charging Party was transferred and put in the middle of the situation.
- David Bacerra harassed Charging Party because of Charging Party's ethnic background and disability, nobody stopped it, including Becky Shaires and Charging Party was injured as a result. Becky Shaires disappeared.
- Charging Party has been off of work since October 10, 2011 and makes between \$200 and \$400 per month while individuals who caused his situation (Mr. Mohr and Ms. Benita) are still working and earning \$2500 per month.
- Charging Party lists multiple expenses and states many people are going hungry while some Assistants are being paid to do nothing.
- Union representative Tre'Shawn Hall "is giving me a hard time by lying to me."
- Charging Party was unable to attend his mother's funeral in January 2012 because of the cost and the Workers Compensation Board forbade travel outside California.
- Teachers without the right credentials are being accommodated.
- It took Charging Party three to four years to find the right person at the union level. Charging Party went to the Labor Department who sent him to the NLRB. NLRB sent him to UTLA. UTLA sent him to NLRB. NLRB sent him to EEOC. EEOC sent him to Labor Department. Labor Department sent him to PERB.
- Charging Party has done his work assignments 100% while $\frac{3}{4}$ of the staff performed 1% to 2% of their duties. For example, Assistants who do not speak English or cannot do math are supposed to help students who have better math and English. Teachers get training but Assistants are left on their own.
- In a letter to Miss Rinder, Principal of Glendale High School, Charging Party stated he was assaulted by a student while the teacher was not in the classroom. The student was a special education student who has a one-on-one assistant but she was absent from the classroom. Charging Party lists other problems with students, such as students that

drop crumbs when they eat, use profanity, flirt with other students and talk constantly and too loud.

- In a May 3, 2011, e-mail message addressed to John Garcia, Charging Party stated he was still having problems with David Becerra who was following Charging Party just to annoy Charging Party. Charging Party stated he had to leave the school whenever Becerra showed up and this has caused Charging Party to have about 15 days of absences. Charging Party also stated that Becerra tried to make him uncomfortable by laying on top of special education students and rubbing his body on them. Charging Party states that thereafter the students began making "gay" jokes and mimicking sexual acts which makes adults uncomfortable. Charging Party also stated he was getting legal advice and was advised to contact Children Services and to get a restraining order against Becerra.
- Mr. Mohr is playing games with Charging Party.
- Students are ditching cooking class.
- Suzan and Anoush cannot do the job therefore they are accommodated. Students do not have help and the situation is out of control.
- They know that Charging Party is a "workers compensation program" so they give him a hard time.
- Students use ethnic slurs and Mr. Mohr doesn't do anything.
- Charging Party told Mr. Valdez that a boy was molesting a girl and Mr. Valdez told Charging Party that the boy could not be punished because he was poor. The girl dropped out of school and the boy began to follow another girl around until he graduated and Mr. Mohr did nothing.
- Because Instructional Assistants don't know how to do their job, the students get no help, and get frustrated and then there are discipline problems.
- Miss Bedoe "turned the table" on Charging Party over a dispute regarding an answer sheet and another Instructional Assistant.
- The other Instructional Assistants care about their makeup and being pretty and deflect their work so they can have a good time. David Becerra acts like a tough guy of the High School.
- Union representatives Leticia Mungia and Tre'Shawn Hall pretend to not know who Becky Shaires and Smiley are. Workers are being abused and hurt. Charging Party has been paying his union dues since 1997.
- Students were using profanity in the Armenian language.
- Charging Party attached a correspondence from him to Adventist Medical Health Center regarding his complaint against Naomi, a Physical Therapist. The correspondence states that a Doctor told Charging Party "You should stop pissing me off with your questions." The Physical Therapist never looked at Charging Party's thumb. Naomi was very disrespectful and she got upset with Charging Party. Naomi told Charging Party he walks with his head down like someone who is always ashamed. Charging Party could not read Naomi's writing. Naomi would not touch Charging Party's skin and she gave a massage with gloves and Charging Party had to wear a t-shirt. When Charging Party was using an exercise machine incorrectly Naomi jumped on his back and it really hurt. It seemed to Charging Party that someone had instructed

Naomi to give Charging Party a hard time so he would not come back to the Center. Naomi said Charging Party needed more therapy but Dr. Gean closed the case suddenly and without warning. Charging Party believes the treatment he received from October 2011 to January 2012 was not professional and Charging Party is not well.

- Charging Party describes a special education student kissing a girl in the school yard. Charging Party stated the students teased Charging Party just to make him upset. Mr. Mohr makes Charging Party get involved when the students are using ethnic slurs and profanity.
- Charging Party attached an e-mail message dated May 25, 2012 from Leticia Munguia, CSEA Field Director, to Charging Party that stated: "The concerns that you raise regarding Glendale Unified School District are advocacy issues that need to be raised through your chapter and leadership team at the local level. I have spoken with your Labor Relations Representative Tre'Shawn Hall and she confirmed that you were represented at your most recent workers compensation meeting with Sylvia Pouncy."
- Charging Party attached a correspondence addressed from him to Keith Pace, dated May 17, 2012, that stated Becky Shaires is not taking care of the work place problems, that Charging Party had contacted the union San Jose office and was told to contact Kawny Moreno. Moreno did not return calls promptly and then Charging Party found out she was retired. Charging Party was then referred to Jose Morales who referred him to Tre'Shawn Hall. Charging Party stated Tre'Shawn confused him, she was "back peddling and being unpredictable." Charging Party stated Tre'Shawn attended a meeting with the District regarding his work restriction and he was not allowed to bring up all the other concerns he had. Charging Party told Tre'Shawn that Becky Shaires should have been there to back him up, Tre'Shawn told Charging Party that Becky Shaires told her she had already told Charging Party that she was not his representative. Charging Party states Becky Shaires never told him such a thing and Becky Shaires lied and was avoiding Charging Party. Charging Party also gave Tre'Shawn a list of problems with his work restriction and later Tre'Shawn denied receiving it. (Charging Party attached a copy of a letter he states he gave to Tre'Shawn). Charging Party stated Becky Shaires was tampering with union work. Another person named Smiley pretended to be a union representative and interfered with Charging Party's job restriction.
- Charging Party attached a letter that he apparently e-mailed to Sylvia Pouncy on June 26, 2012, before a meeting regarding his work restriction. The letter states that June 27, 2012, is the first day he met two persons that pretend to be credible union representatives. The first person was Tre'Shawn Hall. Tre'Shawn told Charging Party he could get disability insurance but she was wrong and should have known that. Don Jensen was the other person and he doesn't know anything about CSEA matters. Keith Pace in San Jose always sent Charging Party back to Tre'Shawn or Leticia Munguia. Letitia says she does not know Becky Shaires. Becky took all of Charging Party's complaints for three years and pretended to be a union representative but she was not and she just gave all complaints to her boss, John Gonzales. Leticia tried to dissuade Charging Party from filing another complaint with the Department of Education. Charging Party went to UTLA and they told him he needed to go to CSEA. Charging Party stated "At my worksite there are Phone numbers on how to contact CSEA."

However it is not easy to get to the right person. Ms. Benita leaves her post early and doesn't help a student she is supposed to help. Ms. Benita doesn't know what an English sentence is but she makes more than \$2000. The student Ms. Benita is supposed to help assaulted Ms. Benita and the student's mother wanted Miss Benita to be replaced. Mr. Mohr worked hard to keep the student and Miss Benita together. The student assaulted Charging Party because he was left alone. Charging Party is supposed to have a soft chair as an accommodation. Other Assistants feel entitled to a soft chair even though they do not have work restrictions because they are not injured. Charging Party has to constantly ask for his chair. Ms. Rinder criticizes. Mr. Mohr is in the business of retaliating when you raise his name. The custodian disrespected Charging Party when he went to look for his chair. Male students attack the mostly female assistants and Charging Party, as a male, has to prevent attacks but he is injured.

- Charging Party lists demands: Full refund of union dues paid since 1997, about \$5,000. All the stress that came with trying to locate the union, \$5,000. All the lies from Becky Shaires, \$5,000. A total of \$15,000 to be used to hire an attorney to do the same job as union.

Discussion

PERB Regulation 32615(a)(5)² requires, inter alia, that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." Thus, a Charging Party should allege 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.)

The Charging Party must also allege 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.)

It appears Charging Party alleges that the exclusive representative denied Charging Party the right to fair representation guaranteed by EERA section 3544.9 and thereby violated section

² PERB Regulations may be found at www.perb.ca.gov.

3543.6(b). The duty of fair representation imposed on the exclusive representative extends to grievance handling. (*Fremont Unified District Teachers Association, CTA/NEA (King)* (1980) PERB Decision No. 125; *United Teachers of Los Angeles (Collins)* (1982) PERB Decision No. 258.) In order to state a prima facie violation of this section of EERA, Charging Party must show that the Respondent's conduct was arbitrary, discriminatory, or in bad faith. In *United Teachers of Los Angeles (Collins)*, the 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. [Citations omitted.]

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.

(*Reed District Teachers Association, CTA/NEA (Reyes)* (1983) PERB Decision No. 332, p. 9, quoting *Rocklin Teachers Professional Association (Romero)* (1980) PERB Decision No. 124; emphasis in original.)

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 "to 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, Ltd.* (9th Cir. 1978) 573 F.2d 1082.)

Charging Party appears to raise the following general concerns:

1. Charging Party is allegedly being forced to do work outside of his classification or outside of his injury based work restrictions.
2. Other Instructional Assistants and Teachers are allegedly not doing their job properly, they are abused and being hurt, they are incapable, do not have adequate training, they

leave work early or do personal errands when they should be working, they yell and are unpleasant, they do not properly discipline students, they improperly take Charging Party's soft chair and/or assert they are also entitled to a soft chair, they are not properly supervising students, they are retaliating against Charging Party for reasons that include his race and his injury/disability, and unionized Instructional Assistants are not being hired.

3. Union Representatives allegedly lie, they don't know who Becky Shaires is, no one knows who other alleged representatives are, some representatives are only concerned about being elected, some give Charging Party a hard time. Nobody knows what is going on and it took Charging Party four years to find the right representative.
4. Becky Shaires is not a union representative but she pretended to be one.
5. Students ditch class, use profanity, racial slurs, drop crumbs and mock sexual activity. There are assaults and molestation.
6. Doctors and/or therapists at Adventist Medical Health Center are disrespectful of Charging Party.

Many of Charging Party's allegations concern conduct of Teachers, Principals, Students, Teachers Assistants, Custodians, Doctors and Therapists. However, only the union owes Charging Party the duty of fair representation. Thus, only allegations concerning conduct by CSEA may serve as a basis to establish a prima facie violation of the duty of fair representation.

With regard to information alleging wrongful conduct toward Charging Party because of his race, injury or disability, such alleged violations are beyond PERB's jurisdiction which is limited to the determination of unfair labor practice claims *arising under public sector labor statutes*. (*California School Employees Association, Chapter 245 (Waymire)* (2001) PERB Decision No. 1448; *Sweetwater Union High School District* (2001) PERB Decision No. 1417-E.) The purpose of EERA is to "promote the improvement of personnel management and employer-employee relations by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by the organizations in their professional and employment relationships with public school employers." (Gov. Code, § 3540.) PERB's jurisdiction does not include employment disputes that are unrelated to the exercise of rights to collective bargaining. Nor does PERB's jurisdiction include workers' compensation, laws governing sexual harassment, laws governing defamation, or laws governing the unemployment insurance process. (See, e.g., *California School Employees Association, Chapter 245 (Waymire)*, *supra*, PERB Decision No. 1448.) Thus, allegations regarding disputes not related to collective bargaining, including disputes regarding staff at Adventist Medical Health Center, are outside of PERB's jurisdiction.

Charging Party's allegations that involve CSEA's representation of Charging Party are within PERB's jurisdiction. Thus, allegations that CSEA does not know who the right or real

representatives are, that they have made things difficult for Charging Party, that they are only concerned with being elected and that it took Charging Party four years to locate the right representative fall within PERB's jurisdiction. However, many of the allegations concerning CSEA's alleged conduct lack specific dates and fail to provide information detailing how CSEA's conduct was arbitrary, discriminatory, or in bad faith. With regard to the allegation that CSEA representative Tre'Shawn Hall lied about whether she received a list from Charging Party, the information provided by Charging Party is:

Before the meeting I asked [] Sylvia Pouncey if she received my email. The email was [t]he list of items she could use to list my work restriction. It was the list of problem[s] related to my work restrictions. Sylvia told me that she did not get my email. Maybe she did not get the chance to look up her email because I sent it late the day before. I told Sylvia that I made a copy of the email and I have it here. Tre[']Shawn told me if she could have the copy I had. I said yes and gave it to her. I could see her reading it and kept it. [On] Friday the 11th of May I received a call from Tre[']Shawn. While we were talking I asked her if she get the chance to read all the content of the document she gets from me before the district meeting. She said that I never gave her a document. I was surprise[d] about that lie. I cannot work with someone who lies. It is a problem for me. I then send her a message asking her to give a ca[ll] or answer my email so I could set up a meeting between her, myself and Leticia Mung[u]ja. I want to [get] everything cleared before I go further working with the union.

Assuming the complained of activity occurred in May 2012, the allegation would be within the statute of limitations. However, even if timely, the information provided by Charging Party does not establish that CSEA's conduct was arbitrary, discriminatory, or in bad faith. In addition, even if CSEA was negligent, there is no information demonstrating that CSEA's conduct completely extinguished Charging Party's right to pursue his claim. (*Coalition of University Employees (Buxton)*, *supra*, PERB Decision No. 1517-H.)

With respect to the information alleging Charging Party needed three to four years to find PERB, the allegations appear untimely.

For these reasons the charge, as presently written, does not state a prima facie case.³ If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies

³ In *Eastside Union School District* (1984) PERB Decision No. 466, the Board explained that a prima facie case is established where the Board agent is able to make "a determination that the facts as alleged in the charge state a legal cause of action and that the Charging Party is capable of providing admissible evidence in support of the allegations. Consequently, where the investigation results in receipt of conflicting allegations of fact or

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 October 12, 2012,⁴ PERB will dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Mary Weiss
Senior Regional Attorney

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contrary theories of law, fair proceedings, if not due process, demand that a complaint be issued and the matter be sent to formal hearing." (*Ibid.*)

⁴ A document is "filed" on the date the document is **actually received** by PERB, including if transmitted via facsimile. (PERB Regulation 32135.)