

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



JEFFEREY L. NORMAN,

Charging Party,

v.

NATIONAL EDUCATION ASSOCIATION  
JURUPA,

Respondent.

Case No. LA-CO-1650-E

PERB Decision No. 2460

October 30, 2015

Appearances: Jefferey L. Norman, on his own behalf; California Teachers Association by Richa Amar, Attorney, for National Education Association Jurupa.

Before Huguenin, Winslow and Gregersen, Members.

DECISION<sup>1</sup>

GREGERSEN, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Jeffrey L. Norman (Norman) of a dismissal (attached) by the PERB Office of the General Counsel of his unfair practice charge. The charge alleges that the National Education Association Jurupa (Association) violated sections 3543.2, 3543.6, 3544.9 and 3545 of the Education Employment Relations Act (EERA)<sup>2</sup> by breaching its representational duty. The Office of the General Counsel dismissed the charge because it was untimely filed, Norman lacked standing, and none of the allegations in the charge included any information demonstrating that the Association handled any contract negotiations, grievances,

<sup>1</sup> 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 Regs., tit. 8, § 31001 et seq.)

<sup>2</sup> EERA is codified at Government Code section 3540 et seq.

or contract administration in bad faith or in a way that was discriminatory or arbitrary. The charge also failed to include sufficient facts explaining how or in what manner the Association's alleged actions or inactions were without a rational basis or devoid of honest judgment. Norman timely filed the instant appeal.

The Board itself has reviewed this matter in full, including Norman's charge, the Association's position statement, the Office of General Counsel's warning and dismissal letters, Norman's August 18, 2015, letter to the Office of the General Counsel,<sup>3</sup> the appeal, and the Association's response to the appeal. Based on that review, the Board itself concludes that the warning and dismissal letters accurately summarize the charge allegations, and are well reasoned and consistent with applicable law. As a threshold matter, Norman's charge is untimely. Although this deficiency was addressed in the Office of the General Counsel's warning and dismissal letters, Norman chose not to amend his charge to correct this deficiency. Moreover, the appeal raises no issues regarding timeliness not already adequately addressed in the warning and dismissal letters. As such, there is nothing more to add to the reasoned analysis provided to Norman by the Office of the General Counsel.

Norman's initial charge and appeal also contain a request for reconsideration of *National Education Association-Jurupa (Norman)* (2014) PERB Decision No. 2371 (*Jurupa*) pursuant to PERB Regulation 32410. In that decision, the Board affirmed the Office of the General Counsel's dismissal of a charge alleging that the Association violated EERA sections 3543.6(a), (b), and (c), and 3544.9 by refusing to provide an attorney to represent Norman in an administrative hearing concerning his dismissal as a permanent teacher.

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<sup>3</sup> Norman sent a letter dated August 18, 2015, to the Board agent in the Office of the General Counsel acknowledging receipt of the warning letter and notifying the Board agent that he did not wish to amend the original charge.

The reconsideration procedure set forth in PERB Regulation 32410 applies only to Board decisions arising out of exceptions to a proposed decision by an administrative law judge (ALJ) after formal hearing. (*Berkeley Federation of Teachers, Local 1078 (Crowell)* (2015) PERB Decision No. 2405a.) The Board does not entertain requests for reconsideration of a Board decision arising out of a dismissal of a charge by the Office of the General Counsel. (*Ibid.*) Because Norman's request for reconsideration relates to a Board decision arising out of a dismissal of a charge rather than exceptions to a proposed decision by an ALJ after formal hearing, his request is summarily rejected.

Accordingly, we hereby affirm the dismissal of the charge and adopt the warning and dismissal letters of the Office of the General Counsel, except as to the discussion of standing, as the decision of the Board itself.

#### ORDER

The unfair practice charge in Case No. LA-CO-1650-E is hereby DISMISSED.

Members Huguenin and Winslow joined in this Decision.

**PUBLIC EMPLOYMENT RELATIONS BOARD**

Los Angeles Regional Office  
700 N. Central Ave., Suite 200  
Glendale, CA 91203-3219  
Telephone: (818) 551-2806  
Fax: (818) 551-2820



August 18, 2015

Jefferey L. Norman

Re: *Jefferey L. Norman v. National Education Association Jurupa*  
Unfair Practice Charge No. LA-CO-1650-E  
**DISMISSAL LETTER**

Dear Mr. Norman:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on April 1, 2015. Jefferey L. Norman (Charging Party) alleges that the National Education Association Jurupa violated sections 3543.2, 3543.6, 3544.9 and 3545 of the Educational Employment Relations Act (EERA or Act)<sup>1</sup> by breaching its representational duty.

Charging Party was informed in the attached Warning Letter, dated August 13, 2015, 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, he should amend the charge. Charging Party was further advised that, unless he amended the charge to state a prima facie case or withdrew it on or before August 24, 2015, the charge would be dismissed. In an August 18, 2015 letter to the undersigned Board agent, Charging Party confirmed receipt of the Warning Letter and advised that, he does "not wish to amend this case, please process the charge immediately." During an August 18, 2015 telephone conversation, Charging Party acknowledged that the charge must be dismissed in light of his August 18, 2015 letter.

Given that an amended charge or a request for withdrawal is not forthcoming, the charge is hereby dismissed based on the facts and reasons set forth in the Warning Letter.

Right to Appeal

Pursuant to PERB Regulations, 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

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<sup>1</sup> EERA is codified at Government Code section 3540 et seq. PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of the EERA and PERB Regulations may be found at [www.perb.ca.gov](http://www.perb.ca.gov).

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, §§ 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.

Sincerely,

J. FELIX DE LA TORRE  
General Counsel

By \_\_\_\_\_  
Yaron Partovi  
Regional Attorney

Attachment

cc: Richa Amar, California Teachers Association

**PUBLIC EMPLOYMENT RELATIONS BOARD**

Los Angeles Regional Office  
700 N. Central Ave., Suite 200  
Glendale, CA 91203-3219  
Telephone: (818) 551-2806  
Fax: (818) 551-2820



August 18, 2015

Jefferey L. Norman

Re: *Jefferey L. Norman v. National Education Association Jurupa*  
Unfair Practice Charge No. LA-CO-1650-E  
**WARNING LETTER**

Dear Mr. Norman:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on April 1, 2015. Jefferey L. Norman (Charging Party) alleges that the National Education Association Jurupa (Association or Respondent) violated sections 3543.2, 3543.6, 3544.9 and 3545 of the Educational Employment Relations Act (EERA or Act)<sup>1</sup> by breaching its representational duty.

#### Relevant Facts

In June 2010, a "Master Grievance" was filed by a group of employees against the Jurupa Unified School District (District). The Association and its president took no part in the "Master Grievance." On March 21, 2013, an unnamed individual informed the Association that he had decided to be represented by the District's lawyer in a deposition to be taken by "Master Grievance" group member Christopher Gillote. On an unspecified date, the Association unilaterally changed the parties' collective bargaining agreement by making individuals affiliated with the "Master Grievance" group sign "consents to representation." On September 3, 2012, the Association assigned Charging Party two attorneys to represent him at his permanent dismissal hearings but did not assign him a third attorney.<sup>2</sup> On or about January 18, 2013, the Association directed Charging Party to communicate with Citrus Belt Uniserv

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<sup>1</sup> EERA is codified at Government Code section 3540 et seq. PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of the EERA and PERB Regulations may be found at [www.perb.ca.gov](http://www.perb.ca.gov).

<sup>2</sup> This allegation was already fully litigated by Charging Party and was dismissed by PERB in its decision *National Education Association-Jurupa (Norman)* (2014) PERB Decision No. 2371. There no request for reconsideration filed pursuant to PERB Regulations. In that decision, it was found that the Charging Party was terminated from the District effective January 18, 2013. (*Id.* at p. 7.)

(CBU) and Charging Party was informed that CBU does not owe unit members a duty of fair representation. On an unspecified date, the Association failed to meet and confer in good faith with the District.

## DISCUSSION

### **I. Burden and Statute of Limitations**

PERB Regulation 32615(a)(5) requires that an unfair practice charge include a “clear and concise statement of the facts and conduct alleged to constitute an unfair practice.” In doing so, a charging party should allege with specificity the particular facts giving rise to a violation. (*National Union of Healthcare Workers* (2012) PERB Decision No. 2249a-M.) The charging party may do this by alleging sufficient facts describing 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.) Such allegations should focus on the elements of the prima facie case. Mere legal conclusions are not sufficient to state a prima facie case. (*Ibid.*; *Charter Oak Unified School District* (1991) PERB Decision No. 873.)

Additionally, 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; *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 filed on April 1, 2015. This means that the six-month statutory period extends back until October 1, 2014. Accordingly, any allegations of wrongdoing by the Association occurring prior to October 1, 2014 are untimely, unless an exception applies. The charge fails to allege the date when the Association failed to meet and confer with the District in good faith in violation of the EERA. Thus, where it cannot be determined whether this allegation was timely filed, this allegation must be dismissed. (*Berkeley Federation of Teachers, Local 1078 (Crowell)* (2015) PERB Decision No. 2405a.) Additionally, with respect to the remaining allegations included in the charge, Charging Party was aware as early as 2013 of the alleged breach of the Association’s representational duty<sup>3</sup>; however no charge was filed

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<sup>3</sup> In cases alleging a breach of the duty of fair representation, the six month statutory limitations period begins to run on the date when the charging party, in the exercise of reasonable diligence, knew or should have known that further assistance from the union was unlikely. (*United Faculty of Grossmont-Cuyamaca Community College District* (2010) PERB Decision No. 2133.)

until nearly two years later. Accordingly, these allegations are untimely and must be dismissed.

## II. Standing

PERB's jurisdiction under the EERA is described by sections 3540.1 and 3541.5, and includes the authority to investigate unfair practice charges, consistent with existing law. EERA section 3541.5 provides that "any employee, employee organization, or employer shall have the right to file an unfair practice charge . . . ." "Public school employee" or "employee" under EERA section 3540.1, subdivision (j) is defined as "a person employed by a public school employer." Thus, individuals who are not employees *at the time of an alleged violation* lack standing to pursue the claim before PERB. Here, Charging Party was terminated from his employment, effective on January 18, 2013. Thus, to the extent Charging Party is alleging conduct which occurred after his January 18, 2013 termination, he lacks standing to file a charge against the Association based on such conduct. (*California State Employees Association (Hutchinson)* (2000) PERB Decision No. 1380-S.) Additionally, Charging Party also lacks standing to assert that the Association failed to bargain in good faith. (*National Education Association-Jurupa (Norman)* (2014) PERB Decision No. 2371, p. 17.)

## II. Duty of Fair Representation

Even if timely and with standing, Charging Party's charge must still be dismissed because he has failed to successfully allege that the Association violated its duty of fair representation. The right to fair representation is guaranteed by EERA sections 3544.9 and 3543.6(b). (*See* Gov. Code, § 3544.9 [requiring an exclusive representative to "fairly represent each and every employee" in the represented unit].) The burden is on the charging party to show how an exclusive representative abused its discretion, and not on the exclusive representative to show how it properly exercised its discretion. (*California School Employees Association & its Chapter 47* (2014) PERB Decision No. 2355 [*citing United Teachers – Los Angeles* (1993) PERB Decision No. 970].)

In order to state a prima facie violation, Charging Party must show that the Association's conduct was arbitrary, discriminatory, or in bad faith. (*United Teachers of Los Angeles* (1982) PERB Decision No. 258.) To demonstrate that the Association's conduct was arbitrary or undertaken in bad faith, Charging Party must at a minimum include an assertion of sufficient facts from which it becomes apparent how or in what manner the Association's action or inaction was without a rational basis or devoid of honest judgment. (*Reed District Teachers Association, CTA/NEA* (1983) PERB Decision No. 332.)

None of the allegations in the charge include any information that demonstrates that the Association handled any contract negotiations, grievances, or contract administration in bad faith or in a way that was discriminatory or arbitrary. The charge also fails to include sufficient facts explaining how or in what manner the Association's alleged actions or inactions were without a rational basis or devoid of honest judgment. Accordingly, the charge fails to demonstrate a prima facie case.

**III. Request for Reconsideration of National Education Association-Jurupa (Norman), supra, PERB Decision No. 2371**

Charging Party requests that the undersigned Board agent grant his “motion for reconsideration” of the above case. Under PERB Regulation 32410, any request for reconsideration must be filed within 20 days of the date of service of the decision. The above decision was served on or about April 18, 2014; however, Charging Party did not file a timely request for reconsideration. Additionally, any requests for reconsideration must be filed with the “Board itself.” (PERB Regulation 32410(a). The “Board itself” means the five member Board, or members thereof authorized by law to act on behalf of the Board. (PERB Regulation 32030.) Accordingly, even if the request was timely filed pursuant to PERB Regulation 32410, the undersigned Board agent lacks authority to grant the Charging Party’s motion.

CONCLUSION

For these reasons the charge, as presently written, does not state a prima facie case.<sup>4</sup> 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 August 24, 2015,<sup>5</sup> PERB will dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Yaron Partovi  
Regional Attorney  
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<sup>4</sup> 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 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.*)

<sup>5</sup> A document is “filed” on the date the document is **actually received** by PERB, including if transmitted via facsimile or electronic mail. (PERB Regulation 32135.)