



**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

JULIE BARRETT,

Charging Party,

v.

UNITED AUTO WORKERS LOCAL 2865,

Respondent.

Case No. SF-CO-212-H

PERB Decision No. 2550-H

February 16, 2018

Appearances: Julie Barrett, on her own behalf; Siegel Lewitter Malkani by Latika Malkani, Attorney, for United Auto Workers Local 2865.

Before Gregersen, Chair; Banks and Winslow, Members.

DECISION¹

WINSLOW, Member: This case is before the Public Employment Relations Board (PERB or Board) on an appeal by Julie Barrett (Barrett) from the Office of the General Counsel's dismissal (attached) of her unfair practice charge. The charge, as amended, alleged that the United Auto Workers Local 2865 (UAW) violated the Higher Education Employer-Employee Relations Act (HEERA)² by failing to fairly represent Barrett in grievances and an unfair practice charge filed by the UAW on her behalf.

¹ PERB Regulation 32320, subdivision (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 [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 Regulations are codified at Cal. Code Regs., tit. 8, § 31001 et seq.)

² HEERA is codified at Government Code section 3560 et seq.

The Office of the General Counsel dismissed the charge as untimely and for failure to state a prima facie case, because it concluded the UAW had no obligation to represent Barrett in unfair practice proceedings before PERB.

We have reviewed the entire case file in this matter and considered the issues raised on appeal and the opposition to the appeal. Based on that review, the Board finds that the warning and dismissal letters accurately describe the allegations in the unfair practice charge, as amended, and are well reasoned and in accordance with applicable law. Accordingly, the Board hereby adopts the warning and dismissal letters as the decision of the Board itself. The appeal is denied in accordance with the following discussion.

DISCUSSION

Pursuant to PERB Regulation 32635, subdivision (a), an appeal from dismissal of an unfair practice charge shall:

- (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.

To satisfy the requirements of PERB Regulation 32635, subdivision (a), the appeal must sufficiently place the Board and the respondent “on notice of the issues raised on appeal.”

(State Employees Trades Council United (Ventura, et al.) (2009) PERB Decision No. 2069-H; City & County of San Francisco (2009) PERB Decision No. 2075-M.) An appeal that does not reference the substance of the Board agent’s dismissal fails to comply with PERB Regulation 32635, subdivision (a). *(United Teachers of Los Angeles (Pratt) (2009) PERB Order No. Ad-381; Lodi Education Association (Hudock) (1995) PERB Decision No. 1124;*

United Teachers – Los Angeles (Glickberg) (1990) PERB Decision No. 846.) Likewise, an appeal that merely reiterates facts alleged in the unfair practice charge without identifying any error or grounds for reversal does not comply with PERB Regulation 32635, subdivision (a). (*Contra Costa County Health Services Department* (2005) PERB Decision No. 1752-M; *County of Solano (Human Resources Department)* (2004) PERB Decision No. 1598-M.) An appeal that fails to comply with PERB Regulations is subject to dismissal on that ground alone. (*American Federation of State, County & Municipal Employees, Local 2620 (McGuire)* (2012) PERB Decision No. 2286-S, pp. 2-3; *City of Brea* (2009) PERB Decision No. 2083-M.)

This appeal fails to comply with PERB Regulation 32635 in virtually every respect. The Office of the General Counsel’s investigation of the unfair practice charge revealed that Barrett’s allegations about UAW’s handling of her grievances were untimely. The charge was dismissed for this reason, among others. Yet Barrett’s appeal does not challenge this determination, or offer any reason why the six-month statute of limitations should be tolled. It cites to no specific issues of procedure, fact, law or rationale to which the appeal is taken. Nor does it identify the page or part of the dismissal to which the appeal is taken or state the grounds for appeal. Instead the appeal explains that the University of California (University) is attempting to “exempt itself from its public obligations, including its UAW contract” by establishing “privatized” programs, and repeats allegations against UAW that were contained in the unfair practice charge.

The Office of the General Counsel dismissed the allegation that the UAW had breached its duty of fair representation by the way it handled an unfair practice charge it filed on Barrett’s behalf against the University based on long-established PERB precedent holding that an exclusive representative does not have a duty to represent employees in an “extra-contractual” forum. The appeal does not take issue with this conclusion or argue for extending, modifying, or

reversing existing law or for establishing new law, but repeats the assertion that the UAW failed to “show up to the PERB hearing” and “agreed to throw my ULP under the bus in return for getting what they wanted in their contract negotiations.”

We dismiss this appeal because it does not comply with PERB Regulation 32635, subdivision (a), and for reasons contained in the warning and dismissal letters, we affirm the dismissal of the unfair practice charge, as amended.

ORDER

The unfair practice charge in Case No. SF-CO-212-H is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chair Gregersen and Member Banks joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1139
Fax: (510) 622-1027



March 21, 2017

Julie Barrett

Re: *Julie Barrett v. UAW Local 2865*
Unfair Practice Charge No. SF-CO-212-H
DISMISSAL LETTER

Dear Ms. Barrett:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on August 19, 2016. Julie Barrett (Barrett or Charging Party) alleges that the UAW Local 2865 (UAW or Respondent) violated the Higher Education Employer-Employee Relations Act (HEERA or Act)¹ by breaching its duty of fair representation.

Charging Party was informed in the attached Warning Letter dated January 13, 2017, 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, an amended charge should be filed. Charging Party was further advised that, unless the charge was amended to state a prima facie case or withdrawn on or before January 27, 2017, the charge would be dismissed.

An amended charge was filed on January 25, 2017. The amended charge largely repeats the allegations in the original charge, i.e., that UAW breached its duty of fair representation through its handling of three grievances and an unfair practice charge alleging that Barrett's former employer, the University of California (University), retaliated against her. The amended charge adds the following statement:

The UAW failed to resolve the three grievances or show up to the PERB hearing. They walked away from the first grievance saying that they were "out of contract." The UAW refused the university's settlement of the second grievance, because they were not willing to give up the leverage provided to them against the university by my ULP, which they successfully used in their new contract negotiations. Furthermore, the UAW dragged their feet forever on filing PERB papers as a tactic to avoid revealing

¹ HEERA is codified at Government Code section 3560 et seq. PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of the HEERA and PERB Regulations may be found at www.perb.ca.gov.

their complicity with the university, and then the UAW refused to go to PERB hearing on multiple occasions. They finally accepted a settlement against my extremely strong wishes.

Regarding the allegations that UAW breached the duty of fair representation through its handling of the grievances, the Warning Letter noted that the original charge did not include the dates on which UAW took action with respect to the grievances it filed on Barrett's behalf. The Warning Letter concluded, therefore, that the charge did not establish that these allegations were timely, citing *Los Angeles Unified School District (2007) PERB Decision No. 1929*. The Warning Letter also concluded, relying on information provided by UAW, that the facts alleged were insufficient to establish a breach of the duty of fair representation.

With respect to the allegations regarding UAW charge against the University, the Warning Letter concluded that the duty of fair representation does not apply to such an extra-contractual forum.

Although the amended charge appears to dispute the information provided by UAW regarding its handling of the grievances, nothing in the amended charge establishes that the allegations concerning those grievances are timely, or that the duty of fair representation applied to UAW's handling of its unfair practice charge. Therefore, the charge is hereby dismissed.

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 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 _____
Joseph Eckhart
Regional Attorney

Attachment

cc: Latika Malkani, Attorney

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1139
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January 13, 2017

Julie Barrett

Re: *Julie Barrett v. UAW Local 2865*
Unfair Practice Charge No. SF-CO-212-H
WARNING LETTER

Dear Ms. Barrett:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on August 19, 2016. Julie Barrett (Barrett or Charging Party) alleges that the UAW Local 2865 (UAW or Respondent) violated the Higher Education Employer-Employee Relations Act (HEERA or Act)¹ by breaching its duty of fair representation.

SUMMARY OF FACTS

Background

UAW is the exclusive representative of the statewide Academic Student Employees (ASE) Unit of the University of California (University). UAW and the University were parties to a memorandum of understanding (MOU) that was originally in effect from December 3, 2010 through September 30, 2013. This MOU was extended until November 5, 2013. UAW and the University then negotiated a successor MOU, which was ratified and took effect on June 21, 2014 and is scheduled to expire on June 30, 2018.

Charge Allegations

In relevant part, the charge states:

I am appealing the UAW's failure to fairly represent me on three grievances and a PERB Charge: BX 01-003-13, BX 01-001-14, and BX 01-002-14, and ULP in PERB case SF-CE-1065-H.

A union owes a duty of fair representation to all of the workers it represents. This duty requires that the union act fairly, impartially, and without ill will or

¹ HEERA is codified at Government Code section 3560 et seq. PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of the HEERA and PERB Regulations may be found at www.perb.ca.gov.

discrimination when pursuing a worker's grievance. The union's actions on my case were arbitrary, discriminatory, and/or in bad faith. The union intentionally mismanaged my case. The union breached its duty of fair representation.

Among other actions, the union against my very strong protests backed out on multiple occasions right before the scheduled PERB hearings on the matter of whether the university can exempt itself from its public obligations by unilaterally calling something a "self-supporting" program. The University of California aggressively is privatizing what was public education, without the public even being aware of it. It is a very sensitive political and financial issue which UC wants to keep under the radar. The union had reached an understanding with the university that it would not put the issue before PERB in exchange for the university allowing the issue to be included in the June 2014 new contract between the UAW and UC. The union had a conflict of interest in the case, and was representing its own interests rather than mine.

...

In this case, the University of California knowingly and unilaterally attempted to exempt itself from its public obligations, including its UAW contract, by calling some of its programs "self-supporting." In doing so, they violated my contract rights as an Academic Student Employee (ASE) at UC Berkeley, represented by the UAW. The UAW filed three grievances and an Unfair Labor Practice (ULP) charge against the University on the ASE's behalf. The University owes me full performance on both ASE contracts I signed with the University, plus remedies for the retaliation that resulted from my pursuing my union rights (among other remedies) including awarding me my degree.

The remainder of the charge consists of additional argument regarding the University's self-supporting degree programs.

Information Provided by UAW

In the fall of 2013, Barrett enrolled in the LLM program at the Boalt Hall School of Law at the University's Berkeley campus. That same term, she accepted employment with the campus's International Area Studies (IAS) program as a Reader, which is a classification within the ASE Unit.

The MOU in effect at the time included Article 11, titled "Fee Remission," which provided:

A. Eligibility

An ASE who is a registered graduate student with (an) ASE appointment(s) or other eligible academic appointment(s) totaling 25% or more of full-time for a given term is eligible to participate in the University's Partial Fee

Remission Program for the Educational and Universitywide Student Services ... Fees.

...

B. PARTIAL FEE REMISSION

For those ASEs eligible for a Partial Fee Remission, the University will provide a Partial Fee Remission of 100% of the annual educational and Universitywide Student Service ... fees.

The IAS program initially paid Barrett's student service fee (as well as her wages), but claimed that Barrett was ineligible for any additional fee remission, because the LLM program was a "self-supporting" program, i.e., one that did not receive state funding. Barrett responded by contacting UAW for assistance; UAW filed Grievance No. BX-01-003-13. This grievance was resolved in November 2013 when the IAS program agreed to pay part of Barrett's fees, approximately \$5,600.

For the following semester, in spring of 2014, Barrett accepted employment as a Reader in the campus's History Department. The Department refused to pay Barrett's fee remission and ultimately rescinded its employment offer. UAW filed two grievances on Barrett's behalf (Nos. BX-01-001-14 and BX-01-002-14), on February 4, 2014 and February 6, 2014, respectively. On dates that are not specified, the University denied these grievances. It also refused to arbitrate them because they arose after the MOU expired.

On April 11, 2014, UAW filed PERB Case No. SF-CE-1065-H, alleging that the University retaliated against Barrett for exercising rights under HEERA by terminating her employment. On November 14, 2014, UAW filed an amended charge, which alleged that the University unilaterally changed its policy on fee remission. On January 23, 2015, UAW filed a second amended charge, which alleged that the University further retaliated against Barrett by refusing to hire her for a summer position and denying her request to change thesis advisors.

On March 25, 2015, PERB's Office of the General Counsel issued a complaint, alleging that the University unilaterally changed its fee remission policy and retaliated against Barrett.

Two informal settlement conferences were conducted with a PERB Board agent, but the case did not settle. It was then assigned to an administrative law judge (ALJ) for formal hearing.

On October 16, 2015, UAW notified Barrett of its intent to settle the charge for the maximum amount of money it could negotiate for her.

On January 26, 2016, the ALJ held a pre-hearing conference. Among other matters, the ALJ addressed e-mail messages he had received directly from Barrett, in which Barrett asserted that UAW had a conflict of interest and was not adequately representing her. The ALJ stated that Barrett could file a motion to join the case as a charging party by February 1, 2016. UAW informed Barrett of this deadline in an e-mail message. Barrett responded that she would join the case only if UAW were removed as a party. No joinder motion was filed.

On February 25, 2016, UAW informed Barrett by e-mail message that it had reached a settlement of the charge, with the University agreeing to pay Barrett \$15,000. UAW representative Mike Miller stated that UAW believed this amount “far exceeds anything you would have achieved through the PERB process.” This amount was paid on March 14, 2016.

According to PERB records, the formal PERB hearing, which was scheduled for March 2-3, 2016, was cancelled.

DISCUSSION

I. Legal Standards

A. Standard for Evaluating an Unfair Practice Charge

An unfair practice charge must include a “clear and concise statement of the facts and conduct alleged to constitute an unfair practice.” (PERB Regulation 32615(a)(5).) 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 (*Dept. of Food and Agriculture*), citing *United Teachers-Los Angeles (Ragsdale)* (1992) PERB Decision No. 944.) Such allegations should focus on the elements of the prima facie case.

In evaluating whether a charge states a prima facie case, the Board agent must assume that the facts alleged by the charging party are true. (*Temple City Unified School District* (1990) PERB Decision No. 843.) Speculation and legal conclusions, however, are not factual allegations, and they are not sufficient to state a prima facie case. (*Dept. of Food and Agriculture, supra*, PERB Decision No. 1071-S; *Charter Oak Unified School District* (1991) PERB Decision No. 873.) In addition, while the Board agent may not resolve factual disputes in favor of the respondent, the Board agent may rely on undisputed facts provided by the respondent under penalty of perjury. (*Chula Vista Elementary School District* (2003) PERB Decision No. 1557.)

B. Statute of Limitations

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.” (Gov. Code, § 3563.2, subd. (a).) A charging party bears the burden of demonstrating that the charge is timely filed. (*Tehachapi Unified School District* (1993) PERB Decision No. 1024; *State of California (Department of Insurance)* (1997) PERB Decision No. 1197-S.)

In cases alleging that the exclusive representative’s conduct violated the duty of fair representation, the date on which the statute of limitations begins to run depends on the type of conduct alleged. In general, the statute begins to run when the charging party knew or should have known of the underlying conduct. (*CSU Employees Union, SEIU Local 2579 (Kyrias)*)

(2011) PERB Decision No. 2175-H (*Kyrias*.) If the failure to act is alleged to breach the duty of fair representation, the statute begins to run when the charging party knew or should have known that further assistance from the union was unlikely. (*IFPTE, Local 21, AFL-CIO (Hosny)* (2011) PERB Decision No. 2192-M (*Hosny*.) However, where a pattern of ongoing conduct is alleged, “a violation may be established based on inaction that occurred more than six months before the charge was filed, provided the inaction was part of the same course of conduct as inaction within the statutory limitations period.” (*Mount Diablo Education Association (Scott)* (2010) PERB Decision No. 2127 (*Scott*.)

C. Duty of Fair Representation

HEERA provides that “[t]he employee organization recognized or certified as the exclusive representative shall represent all employees in the unit, fairly and impartially. A breach of this duty shall be deemed to have occurred if the employee organization’s conduct in representation is arbitrary, discriminatory, or in bad faith.” (Gov. Code, § 3578.)

The duty of fair representation applies to conduct in which the union has the exclusive right to represent an employee. (*Service Employees International Union, Local 1021 (Sahle)* (2012) PERB Decision No. 2261-M (*Sahle*.) Thus, the duty applies when the union bargains a contract or memorandum of understanding on behalf of represented employees. (*California School Employees Association and its Chapter 107 (Chacon)* (1995) PERB Decision No. 1108.) It also applies when the union is enforcing employee rights under a negotiated grievance procedure to which the union has exclusive access. (*Sahle, supra*, PERB Decision No. 2261-M.) The Board has explained the scope of the exclusive representative’s duty as follows:

An exclusive representative owes no duty of fair representation to a unit member unless the exclusive representative possesses the exclusive means by which such member can vindicate an individual right, and the right in question derives from a collective bargaining agreement.

(*National Education Association-Jurupa (Norman)* (2014) PERB Decision No. 2371 (*Norman*); see also *Service Employees International Union, Local 1021 (Horan)* (2011) PERB Decision No. 2204-M (*Horan*.)

In addition to establishing that the duty of fair representation applied, the charging party must allege sufficient facts to establish that the exclusive representative’s conduct was arbitrary, discriminatory, or in bad faith. (*United Teachers of Los Angeles (Collins)* (1982) PERB Decision No. 258 (*Collins*.) The burden is on the charging party to show that the exclusive representative abused its discretion, not on the exclusive representative to show that it properly exercised its discretion. (*United Teachers – Los Angeles (Wyler)* (1993) PERB Decision No. 970.)

II. Analysis

The charge alleges that UAW breached its duty of fair representation through its handling of three grievances and PERB Case No. SF-CE-1065-H. The factual allegations in the charge, however, are insufficient to establish a prima facie case.

A. Grievances

As an initial matter, the charge does not allege the dates on which UAW took any action with respect to the grievances filed on Barrett's behalf. Because timeliness cannot be determined when no dates are alleged, the charge is subject to dismissal. (*Los Angeles Unified School District* (2007) PERB Decision No. 1929.) In addition, based on the information provided by UAW, it appears that the allegations regarding the grievances would be untimely even if dates were alleged. Because the charge was filed on August 19, 2016, it must be established that Barrett neither knew nor should have known before February 19, 2016, that UAW was no longer pursuing the grievances on her behalf. (*Hosny, supra*, PERB Decision No. 2192-M.) But it appears that all three grievances were concluded well before that date. The first grievance was resolved in November 2013, when the IAS program agreed to pay part of Barrett's fee remission. And it appears that the other two grievances concluded in 2014, when the University refused to arbitrate them. If so, any allegations concerning UAW's handling of these grievances are untimely.

Although UAW's actions with respect to PERB Case No. SF-CE-1065-H continued after February 19, 2016, there is no basis for treating UAW's handling of the grievances as part of the same course of conduct as its handling of the unfair practice charge. (Cf. *Scott, supra*, PERB Decision No. 2127.) This is primarily because, as discussed below, UAW owed Barrett no duty of fair representation with respect to filing an unfair practice charge with PERB.

Even if the allegations concerning UAW's handling of the grievances were timely, the charge would still fail to state a prima facie case. The charge includes no factual allegations regarding UAW's handling of the grievances. Accordingly, the information provided by UAW in its position statement may be accepted as true. (*Chula Vista Elementary School District, supra*, PERB Decision No. 1557.) That information suggests no breach of the duty of fair representation.

According to UAW, the first grievance was resolved when the IAS program agreed to pay Barrett \$5,600, an amount Barrett accepted. Absent an allegation that Barrett requested that further action be taken, it was not arbitrary, discriminatory, or in bad faith for UAW not to pursue the grievance further. (See *California School Employees Association (Milner)* (2011) PERB Decision No. 2224 [no violation of the duty of fair representation where the employee did not request the union's assistance].) But UAW's decision to accept this resolution would not necessarily breach the duty of fair representation even if Barrett did not agree with it. A union's discretion in grievance handling includes agreeing to a settlement which the employee disapproves (*United Teachers of Los Angeles (Seliga)* (1998) PERB Decision No. 1289), or withdrawing from further representation after the employee rejects a settlement agreement negotiated by the union (*California State Employees Association (Carrillo)* (1997) PERB Decision No. 1199-S). The question remains whether the union's decision was arbitrary, discriminatory, or in bad faith.

Also according to UAW, the February 2014 grievances concluded after the University denied them and then refused to arbitrate them, on the grounds that they arose after the MOU expired. It is well settled that contractual arbitration provisions generally expire along with the agreement in which they are contained, unless: (1) the dispute “involve[s] facts and occurrences that arose before expiration”; (2) the dispute “involve[s] post-expiration conduct that infringes on rights accrued or vested under the agreement; or (3) under normal principles of contract interpretation. (*County of Orange* (2011) PERB Decision No. 2155-M, citing *Trustees of the California State University* (1997) PERB Decision No. 1231-H.) A union does not breach the duty of fair representation by declining to pursue arbitration of a grievance for which it reasonably believes arbitration is unavailable. (*Coalition of University Employees (Buxton)* (2003) PERB Decision No. 1517-H.) There is no indication in this case that arbitration was available for the February 2014 grievances. As a result, it was not arbitrary, discriminatory, or in bad faith for UAW to decline to pursue them after the University refused to arbitrate.

Therefore, the allegations concerning UAW’s handling of the three grievances appear to be untimely, and do not otherwise state a prima facie case.

B. Case No. SF-CE-1065-H

The charge also alleges that UAW breached its duty of fair representation in handling Case No. SF-CE-1065-H. This allegation does not state a prima facie case.

PERB has long held that the pursuit of remedies in an “extra-contractual” forum—i.e., one not connected with negotiating or enforcing a labor contract—is beyond the duty of fair representation. Thus, the duty does not apply before administrative agencies such as the Department of Fair Employment and Housing or the Equal Employment Opportunity Commission. (*California School Employees Association (Garcia)* (2001) PERB Decision No. 1444; *Berkeley Federation of Teachers (Lavan)* (1997) PERB Decision No. 1193.) Nor does it apply in PERB proceedings. PERB has dismissed allegations that a union breached the duty of fair representation by: (1) failing to assist an employee in filing an unfair practice charge (*Teamsters Local 228 (Cardoso)* (2006) PERB Decision No. 1845; *California School Employees Association (Mrvichin)* (1988) PERB Decision No. 660); (2) failing to represent an employee during a PERB informal conference (*California School Employees Association (Mrvichin)* (1988) PERB Decision No. 661); and (3) mishandling a charge filed by the union (*Service Employees International Union, Local 790 (Banks, et al.)* (2004) PERB Decision No. 1636-M).

Therefore, because the duty of fair representation does not apply in PERB proceedings, the allegation that UAW breached the duty in its handling of Case No. SF-CE-1065-H does not state a prima facie case.

CONCLUSION

For these reasons the charge, as presently written, does not state a prima facie case.² 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 January 27, 2017,³ PERB will dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Joseph Eckhart
Regional Attorney

JE

² 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.*)

³ 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.)