

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ELIZABETH DeFRATES,)
)
 Charging Party,) Case No. SF-CO-197
)
 v.) PERB Decision No. 422
)
 MOUNT DIABLO EDUCATION ASSOCIATION,) October 24, 1984
)
 Respondent.)
 _____)

Appearances: Roger A. Carnagey, attorney for
Elizabeth DeFrates.

Before Hesse, Chairperson; Tovar and Jaeger, Members.

DECISION

TOVAR, Member: Elizabeth DeFrates appeals the determination of a regional attorney of the Public Employment Relations Board that a complaint should not issue on her charge that the Mount Diablo Education Association, CTA/NEA (Association) breached its statutory duty to fairly represent her.¹ For the reasons which follow, we affirm the regional

¹Section 3544.9 of the Educational Employment Relations Act (Government Code section 3540 et seq.) provides as follows:

The employee organization recognized or certified as the exclusive representative for the purpose of meeting and negotiating shall fairly represent each and every employee in the appropriate unit.

Section 3543.6 of the Act, which sets forth conduct of employee organizations which shall be considered unlawful, states at

attorney's determination.

THE CHARGE

The charge, as amended, contains the allegations which follow: In March 1983, the Association executed a collective bargaining agreement with the Mount Diablo Unified School District (District). This contract was a successor to a previous agreement between these parties. Among other things, it contained a new and different provision on involuntary transfer of unit members. Specifically, it modified the method of calculating seniority rankings for the purpose of identifying which individuals would be selected for transfer in the event the District experienced the need for such an action.

Under the involuntary transfer provision set forth in the older contract, an employee's seniority rank was based simply on the seniority list maintained by the District as of November 1, 1979. This District roster generally ranked the unit members according to their original date of hire. If an employee left District service but later returned, however, his

subsection (b) that it shall be unlawful for an employee organization to

(b) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

or her seniority was generally revised to start anew, dating from the date of rehire. The District's practice, however, was to make occasional exceptions to the general rule on employees with breaks in service. Thus, a small, though unspecified, number of unit members with breaks in service were recognized on the District's roster as having seniority dating from their original date of hire. DeFrates was among this group.

The contract negotiated by the Association and the District in 1983 revised the method of determining seniority. Rather than accepting the rankings as they existed on the District's list, the contract specified that the seniority of an employee who had a past break in service would date in all cases from his or her date of rehire after the break.

The effect of this contract change was to lower the seniority rankings of a small number of unit members and, consequently, to advance the rankings of a different and larger group. DeFrates was among those who, having taken a break in service, lost seniority under the new contract.

During the term of the new contract, DeFrates was notified by the District that a teacher had to be transferred from her school to another school and that, pursuant to the involuntary transfer provision of the agreement, she had been identified as the individual to be transferred because of her low seniority ranking. At this point DeFrates requested the assistance of the Association in grieving the transfer, but the Association

refused to offer assistance based on its expressed opinion that the District was in compliance with the existing contract.

DeFrates asserts in her charge that the change in the method of calculating seniority is "arbitrary, discriminatory and in bad faith." She alleges that in negotiating this change the Association acted to strip a small number of unit members of a benefit and to award that benefit to a larger group "with no objective or demonstrably legitimate reason for the change." Instead, the change was motivated by "political expediency" and the desire of the Association to win favor with the majority of employees at the expense of a minority.

The regional attorney's investigation revealed that prior to proposing the above-described change at the negotiating table, the Association polled its membership on the idea. Literature accompanying the polling stated that the proposal had been suggested as a means of eliminating the existing unfairness experienced by unit members with continuous service who were outranked by employees with an earlier date of hire on the District's seniority list but who, because of a break in service, had actually put in fewer years of service with the District. The poll results showed that a substantial majority of the members favored the proposed change.

The regional attorney dismissed the charge on the grounds that it did not contain allegations that the Association's decision to negotiate the change in the contract was arbitrary,

discriminatory or in bad faith. He concluded instead that the change was legitimately motivated by the Association's desire to remedy the unfairness in the old contract to those without a break in service.

DISCUSSION

On appeal, DeFrates advances two theories in support of her claim that the Association's conduct, as alleged, violated the duty of fair representation. First, she asserts that the old contract, as interpreted by an arbitrator's decision, "froze" all seniority rankings of the unit members and that the Association cannot lawfully negotiate any change which would vary those rankings. In essence, she argues that her seniority rank under the old contract was vested.

We find no support for this argument. By its own terms, the old contract was effective only for the specified time period of July 1, 1972 through June 30, 1982. DeFrates does not allege that any language in the contract itself provided that seniority rankings determined thereby would be permanent. Indeed, the involuntary transfer provision of that agreement simply provides that, during the term of the contract, if the District needed to transfer a unit member, it would use the specified method of identifying the individual to be transferred. DeFrates has alleged no facts showing that the Association's right to alter this transfer procedure in a successor agreement is any more circumscribed than its right to

negotiate a change in the wage rate or any other term or condition of employment. DeFrates seems to assert that the arbitrator's decision, which fixed the above-described interpretation of the transfer provision in the old contract, somehow acted to "freeze" the former method of calculating seniority. We find no such significance in that decision. Indeed, to the contrary, the decision itself expressly reminds the parties that they are free to negotiate a change in the method of calculating seniority set forth in the old contract.

DeFrates¹ second theory of the case is that the change in the method of calculating seniority was motivated by the Association's desire to curry favor with a larger group of unit members by unfairly sacrificing the legitimate interests of a smaller group. Such an act of political expediency, she has alleged, is arbitrary, discriminatory, and in bad faith.

Conduct of an exclusive representative towards a unit member which is arbitrary, discriminatory or in bad faith, we have held, violates the exclusive representative's duty of fair representation. Rocklin Teachers Professional Association (3/26/80) PERB Decision No. 124. This standard extends to an exclusive representative's actions in contract negotiations. Redlands Teachers Association (9/25/78) PERB Decision No. 72; Rocklin Teachers Professional Association, supra.

DeFrates relies on Barton Brands, Ltd. v. NLRB (7th Cir. 1976) 529 F.2d 793 [91 LRRM 2241], in which the court found

that a union violates the duty of fair representation when it acts solely on grounds of "political expediency."

While a union may make seniority decisions within "a wide range of reasonableness . . . in serving the interests of the unit it represents" [citation omitted], such decisions may not be made solely for the benefit of a stronger, more politically favored group over a minority group.

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The union must show some objective justification for its conduct beyond placating the desires of the majority of the unit employees at the expense of the minority.

In Hardcastle v. Western Greyhound Lines (9th Cir. 1962) 303 F.2d 182 [50 LRRM 2239], a union member presented much the same theory in support of his claim that his union had failed to fairly represent him in negotiating a new seniority provision. He stated his theory as follows:

The political strength or weakness of a group is not a proper basis for discrimination as between groups of employees. That is, a modification of seniority which favors a majority group over a minority and has no other rational basis would fail to meet the test of fairness required by a union in representing its members. [Emphasis added.]

The court, however, gave neither approval nor disapproval to the charging party's theory. Even if the theory were a correct statement of the law, held the court, a rational basis for the new seniority rule was apparent from the record, and thus no violation of the duty of fair representation was shown.

We find ourselves in much the same circumstances as the court in Hardcastle, supra. Thus, we need not decide the validity of the charging party's legal theory here since an "objective justification" or "rational basis" for the Association's action is apparent from DeFrates' own pleadings. Her factual allegations describe a situation in which some bargaining unit members with a break in service were given a date of hire based on their original date of employment with the District while other employees, otherwise identically situated, were assigned a date of hire based on their rehire date. Plainly, such an inconsistent practice is unfair and undesirable. Moreover, the arbitrator's decision incorporated by DeFrates as a part of her amended charge, and upon which she emphatically relies, shows that the Association was unaware at the time the old involuntary transfer provision was negotiated that the District had engaged in this inconsistent practice and that the Association's position in the arbitration was that the contract should be interpreted to avoid those inconsistencies since they caused morale problems and confusion among the teachers.

DeFrates argues on appeal that the regional attorney acted improperly in relying on information provided by the respondent in its defense without providing charging party "an opportunity to rebut said defense." However, because we do not rely on any

such information offered by the respondent, we find it unnecessary to resolve the exception.

ORDER

Upon the foregoing Decision and the entire record in this matter, Case No. SF-CO-197 is DISMISSED.

Chairperson Hesse and Member Jaeger joined in this Decision.