STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

BEVERLY LINN, Charging Party, v. SAN FRANCISCO CLASSROOM TEACHERS ASSOCIATION, CTA/NEA, Respondent.	)	Case No. SF-CO-229 PERB Decision No. 444 November 29, 1984

Appearances: Carroll, Burdick & McDonough by David P. Clisham, Attorney for Beverly Linn; Kirsten L. Zerger, Attorney for San Francisco Classroom Teachers Association, CTA/NEA.

Before Hesse, Chairperson; Jaeger and Morgenstern, Members.*

DECISION

This case is before the Public Employment Relations Board on an appeal by Beverly Linn of the Board agent's dismissal, attached hereto, of her charge alleging that the San Francisco Classroom Teachers' Association, CTA/NEA, violated sections 3543.6(a), (b), (c) and 3544.9 of the Educational Employment Relations Act (Government Code section 3540 et seq.).

We have reviewed the dismissal and, finding it free from prejudicial error, adopt it as the Decision of the Board itself.

ORDER

The unfair practice charge in Case No. SF-CO-229 is DISMISSED WITHOUT LEAVE TO AMEND.

By the BOARD

*Members Tovar and Burt did not participate in this Decision.

STATE OF CALIFORNIA GEORGE DEUKMEJIAN, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD
San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, California 94108
(415) 557-1350

June 1, 1984

David P. Clisham
One Ecker Bldg., Suite 400
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Re: REFUSAL TO ISSUE COMPLAINT AND DISMISSAL OF UNFAIR PRACTICE CHARGE
Beverly Linn v. San Francisco Classroom Teachers Association, CTA/NEA
Charge No. SF-CO-229

Dear Parties:

Pursuant to Public Employment Relations Board (PERB) Regulation section 32620(5), a complaint will not be issued in the above-referenced case and the pending charge is hereby dismissed because it fails to allege facts sufficient to state a prima facie violation of the Educational Employment Relations Act (EERA).[1] The reasoning which underlies this decision follows.

On March 29, 1984 Ms. Beverly Linn, charging party, filed an unfair practice charge against the San Francisco Classroom Teachers Association CTA/NEA (Association) alleging violation of EERA section 3543.6, subdivisions (a), (b) and (c). More specifically, charging party appears to allege that the Association and the San Francisco Unified School District (District) negotiated an interpretation of section 13.5.8 of the then-effective collective bargaining agreement to elevate the interests of a co-worker, and as a consequence, subjected her to foreseeably adverse consequences. This assertion is described in more detail as follows. Charging party has slightly more seniority than Ms. Corvino. As a consequence, it was Ms. Corvino, rather than charging party, who has been involuntarily transferred on two occasions. First, at the beginning of the September 1982 school year, Ms. Corvino was transferred from Longfellow Elementary School. Ms. Corvino was subsequently transferred back on the 9th day of the semester. A subsequent transfer in September 1983, led Ms. Corvino to file a grievance, contending that this was the second time within two years that she had been transferred, and that such conduct on the part of the District was in violation of article 13, section 13.5.6, which provides:

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[1]References to the EERA are to Government Code sections 3540 et seq. PERB Regulations are codified at California Administrative Code, Title 8.

> No employee shall be involuntarily transferred two (2) years in a row without consent or special circumstances equivalent to school closure or elimination of program.

The District and the Association concluded that the contract provision protected Ms. Corvino against these two transfers, reasoning that being sent from Longfellow for nine days during 1982 met the definition of "involuntary transfer" contained in the collective bargaining agreement. Charging party complains that, as a consequence of the interpretation, she will now be subjected to involuntary transfer in the subsequent school year.

On May 9, 1984 the regional attorney discussed the charge with charging party's attorney, Mr. David P. Clisham. Mr. Clisham was invited to either withdraw or amend the present charge to cure the present deficiencies. The regional attorney explained that the charge, as presently set forth, fails to state a prima facie violation of EERA section 3543.6, subdivisions (a), (b) and/or (c). Mr. Clisham stated that, if he was able to find legal authorities to support his position that, as stated, the charge states a prima facie violation, he would submit them within one week's time. To date, no communication has been received from Mr. Clisham subsequent to the telephone conversation of May 9, 1984.

Charging party has alleged that the Association denied her the right to fair representation guaranteed by section 3544.9, and thereby violated sections 3543.6(a) and (c). The fair representation duty imposed on the exclusive representative extends to contract negotiations (Redlands Teachers Association (Faeth) (9/24/78) PERB Decision No. 72; SEIU, Local 99 (Kimmett) (10/19/79) PERB Decision No. 106; Rocklin Teachers Professional Association (Romero) (3/26/80) PERB Decision No. 124; El Centro Elementary Teachers Association (Willis) (8/11/82) PERB Decision No. 232); contract administration (Castro Valley Teachers Association (McElwain) (12/17/80) PERB Decision No. 149; SEIU Local 99 (Pottorff) (3/30/82) PERB Decision No. 203) and to grievance handling (Fremont Teachers Association (King) (4/21/80) PERB Decision No. 125; United Teachers of Los Angeles (Collins) (11/17/83) PERB Decision No. 258). PERB has ruled that a prima facie statement of such a violation requires allegations that: (1) the acts complained of were undertaken by the organization in its capacity as the exclusive representative of all unit employees; and (2) the representational conduct was arbitrary, discriminatory, or in bad faith.

Charging party has objected to two aspects of the Association's conduct: first, that the agreement regarding the definition of "involuntary transfer" benefited Ms. Corvino at charging party's expense, and second, that charging party was not properly informed of the agreement and its effects before it was

reached. PERB has held that a union can settle a grievance based not only on the remedy provided for the individual grievant but also upon consideration of its effect on the unit as a whole. See, e.g., Castro Valley Teachers Association (McElwain), supra (a refusal to take a grievance to arbitration was not a violation of the duty of fair representation where the union weighed the benefit to the unit as a whole against the benefit to charging parties); Fremont Teachers Association (King), supra (no breach of the duty of fair representation by union processing a grievance without permission of the employee). The duty of fair representation is met as long as there is some consideration of the views of various groups of employees and some access is provided for communication of those views. Kimmett, supra; El Centro, supra; Waiters Union, Local 181 v. Hotel Assn. (D.C.Cir. 1974) 498 F.2d 998 [86 LRRM 2002].

Charging party has failed to state a prima facie violation of section 3543.6(b). There are no facts alleged to support the claim that the Association acted in bad faith and/or a discriminatory manner toward charging party and other members of the unit. The parties' resolution of this grievance is an appropriate part of the ongoing process of collective bargaining. The parties' interpretation of the contract provision defining "involuntary transfer" has narrowed the power of the District and extended the protection of all unit members. Although charging party is next in line for an "involuntary transfer," should one be necessary from the District's point of view, she is eligible for the same benefit obtained by the interpretation as Ms. Corvino: a short-term transfer will be regarded as one of the two involuntary transfers which insulate an employee for a contractually-required period. Additionally, the allegations reveal that charging party had an opportunity to speak against the Association's interpretation of the contract language and that the Association ultimately clarified the consequences which would befall unit members. Accordingly, the allegations are dismissed and no complaint will issue thereon.

Pursuant to Public Employment Relations Board regulation section 32635 (California Administrative Code, title 8, part III), you may appeal the refusal to issue a complaint (dismissal) to the Board itself.

Right to Appeal

You 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 Notice (section 32635(a)). To be timely filed, the original and five (5) copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) on June 21, 1984, or sent by telegraph or certified United States mail postmarked not later than June 21, 1984 (section 32135). The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

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 (5) copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal (section 32635(b)).

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany the document filed with the Board itself (see section 32140 for the required contents and a sample form). The document will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

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 (section 32132).

Final Date

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

Very truly yours,

DENNIS M. SULLIVAN
General Counsel

By Peter Haberfeld
PETER HABERFELD
Regional Attorney

cc: General Counsel