

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



MARTHA O'CONNELL,)	
)	
Charging Party,)	Case No. SF-CO-14-H
)	
v.)	PERB Decision No. 596-H
)	
CALIFORNIA STATE EMPLOYEES')	December 16, 1986
ASSOCIATION,)	
)	
Respondent.)	

Appearance; Martha Maire O'Connell, on her own behalf.
Before Morgenstern, Burt and Porter, Members.

DECISION

MORGENSTERN, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Martha O'Connell, the charging party, of the decision of the Board's regional attorney to dismiss the instant unfair practice charge filed against the California State Employees' Association (CSEA).

FACTUAL ALLEGATIONS

On February 28, 1986, O'Connell filed an unfair practice charge claiming that CSEA violated section 3571.1(e) of the Higher Education Employer-Employee Relations Act (HEERA).¹ In general, Charging Party's allegations refer to CSEA's failure to fund the travel expenses incurred by individual grievants wishing to attend

¹HEERA is codified at Government Code section 3560 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

the fourth-level grievance meetings at the chancellor's office in Long Beach, California. O'Connell claims that CSEA's policy, which declines to fund grievants' travel "in all but the most extraordinary circumstances," deprives O'Connell and other employees of their right to monitor the adequacy of the representation provided by their exclusive representative.

The charging party also asserts that CSEA misrepresented its position regarding union-funded travel to grievance meetings. Specifically, the charge refers to an informational meeting held at San Jose State University on August 1, 1985. Two members of the union bargaining council met with CSEA members to discuss the contract before the membership for ratification. During this two-hour "informational" meeting, Melissa E. Miller, a member of the CSEA chapter in San Jose, asked the two CSEA bargaining council members about travel to the fourth-step grievance meetings in Long Beach. According to the charge, the two council members repeatedly assured those in attendance that CSEA would "pick up the tab" for grievants traveling to Long Beach. The charging party also asserts that the issue of attendance at such meetings at the chancellor's office was a matter of great concern to numerous members and had been mentioned as a reason for voting "no" on the contract in flyers put out at both San Francisco State and San Jose State.

DISCUSSION

The duty of fair representation set forth in HEERA section 3578 is violated where an exclusive representative fails to fairly

and impartially represent all employees in the unit and engages in conduct that is arbitrary, discriminatory, or in bad faith.

California State Employees' Association (Dees) (1985) PERB Decision No. 496-H. In his dismissal of O'Connell's charge, the regional attorney rejected the claim that CSEA's rule concerning the funding of grievants' travel breached the union's duty of fair representation. We are in agreement with his conclusion:

Charging party has not alleged sufficient facts to support a claim that the failure of the exclusive representative to finance a grievant's trip to the fourth level conference in all circumstances breaches its duty of fair representation. In the absence of specific allegations of arbitrary, discriminatory or bad faith denial of representation, there is no violation.

We are not in agreement, however, with the regional attorney's consideration of that part of O'Connell's charge dealing with the alleged misrepresentation. In private sector cases relied on by the regional attorney, the misrepresentations made to employees concerned bargaining gains that would have appeared in the contract then before the members for ratification. Deboles v. Trans World Airlines, Inc. (3rd Cir. 1977) 552 F.2d 1005 [94 LRRM 3237] cert, denied (1977) 434 U.S. 837 [96 LRRM 2514]; Anderson v. United Paperworkers International Union (8th Cir. 1981) 641 F.2d 574 [106 LRRM 2513]; Meat Cutters Local 17 (Aero Restaurant, Inc.) (1979) 241 NLRB 22 [100 LRRM 1481]. In those instances, evidence presented in support of a violation of the duty of fair representation involving the contract ratification process was examined to determine whether the employees reasonably relied on

the misrepresentation in deciding whether to vote for ratification and whether a causal relationship existed between the misrepresentation and the injury to the employee. Anderson, supra, requires a showing that the vote to ratify would have been different had the misrepresentations not been made and that the employer would have acceded to the union's demands had the vote been different.

Here, O'Connell does not allege that a misrepresentation was made concerning a provision of the contract. Accordingly, we find that the Anderson standard and the federal cases relied on by the regional attorney are inapplicable to this case, particularly that part of the test that would require a showing here that the employer would have acceded to CSEA's demand that CSEA fund grievants¹ travel.

Our conclusion that the Anderson standard is inapposite, however, does not end our analysis. Rather, we believe that a prima facie case of a breach of the duty of fair representation has been stated where it is alleged that the exclusive representative knowingly misrepresented a fact in order to secure from its constituents their ratification of a contract.

Because this Board has not, before today, entertained a duty of fair representation claim concerning misrepresentation in the context of a contract ratification vote, inquiries pertinent to the Board's standard articulated above may not have been made by the regional attorney. Indeed, considering the factual allegations appearing in O'Connell's charge as true for purposes of establishing a prima facie case (San Juan Unified School

District (1977) EERB Decision No. 12),² we have little evidence against which our legal standard can be judged. Accordingly, we reverse the regional attorney's dismissal of O'Connell's charge concerning the misrepresentation in the ratification process and direct the regional attorney to reconsider the charged allegations and conduct his investigation in accordance with the legal standard noted above.

ORDER

Based on the foregoing, the Board AFFIRMS the regional attorney's dismissal of that portion of the charge alleging that the exclusive representative's discretionary travel funding policy violates the duty of fair representation. As to the claimed misrepresentation, we REMAND the case to the regional attorney for processing pursuant to PERB Regulation 32620 et seq.³

Members Burt and Porter joined in this Decision.

²Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board.

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