STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

JAMES VERNON BROWN, Charging Party, v. LOS ANGELES SCHOOL DISTRICT PEACE OFFICER'S ASSOCIATION, Respondent.	)	Case No. LA-CO-379 PERB Decision No. 627 June 23, 1987

Appearance; James V. Brown, on his own behalf.

Before Hesse, Chairperson; Porter, Craib and Shank, Members.

DECISION AND ORDER

This case is before the Public Employment Relations Board (Board) on appeal by Charging Party of the Board agent's dismissal, attached hereto, of his charge alleging that the Los Angeles School District Peace Officer's Association violated section 3543.6(b)[1] of the the Educational Employment Relations Act (Act). We find Charging Party's claim that the Board agent showed favoritism or bias to be unsupported by any factual assertions and thus without merit. Moreover, having

[1]Although Charging Party alleged that the Respondent's conduct violated section 3543.6(c) of the Act, a duty of fair representation allegation is correctly plead as a 3543.6(b) violation. The Board agent considered the charge as such and we agree that his analysis was appropriate. See Rocklin Teachers Professional Association (1980) PERB Decision No. 124.

reviewed the dismissal de novo, we find it to be free of prejudicial error and adopt it as the Decision of the Board itself. This Decision is consistent with our previous determination in Clovis Unified School District (1986) PERB Decision No. 597.

The unfair practice charge in Case No. LA-CO-379 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

By the BOARD

STATE OF CALIFORNIA GEORGE DEUKMEJIAN, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD
LOS ANGELES REGIONAL OFFICE
3470 WILSHIRE BLVD., SUITE 1001
LOS ANGELES, CALIFORNIA 90010
(213) 736-3127

March 4, 1987

James Vernon Brown

Re James Vernon Brown v. Los Angeles School District Peace Officer's Association, Unfair Practice Charge No. LA-CO-379
: DISMISSAL OF UNFAIR PRACTICE CHARGE

Dear Mr. Brown:

The above-referenced charge, filed on October 27, 1986, alleges that the Los Angeles School District Peace Officers Association breached a settlement agreement reached with the Charging Party concerning a complaint against the Personnel Commission of the Los Angeles Unified School District. This conduct is alleged to violate section 3543.6 of the Educational Employment Relations Act ("EERA").

I indicated to you in my attached letter dated February 3, 1987 that the above-referenced charge did not state a prima facie case. You were advised that if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge accordingly. You were further advised that unless you amended the charge to state a prima facie case, or withdrew it prior to February 10, 1987, it would be dismissed. On February 10, 1987 you left a handwritten note at this office requesting additional time to file an amended charge. In my letter of February 23, 1987 I granted you an extension until February 27 to file your amended charge. In my telephone conversation with you on February 25, 1987 you acknowledged that you had received this letter and that you would be filing your amended charge by the 27th. It is now March 4 and I have still not received any new filing from you.

Since I have not received either a request for withdrawal or an amended charge I am dismissing the charge based on the facts and reasons contained in my February 3, 1987 letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, 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 dismissal (California Administrative Code, title 8, section 32635(a)). To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.), or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filinq. Code of Civil Procedure section 1013 shall apply. (See 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 copies of a statement in opposition within twenty 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 each copy of a document served upon a party or 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 hostage 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 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.

Sincerely,

JEFFREY SLOAN
General Counsel

By
Donn Ginoza
Regional Attorney

Attachment

cc: N. Culver
R. Keith

PUBLIC EMPLOYMENT RELATIONS BOARD
Los Angeles Regional Office
3470 Wilshire Blvd., Suite 1001
Los Angeles, California 90010
(213)736-3127

February 3, 1987

James Vernon Brown

Re: James Vernon Brown v. Los Angeles School District Peace Officer's Association
Unfair Practice Charge No. LA-CO-379

Dear Mr. Brown:

The above-referenced charge, filed on October 27, 1986, alleges that the Los Angeles School District Peace Officer's Association breached a settlement agreement reached with the Charging Party concerning a complaint against the Personnel Commission of the Los Angeles Unified School District. This conduct is alleged to violate section 3543.6 of the Educational Employment Relations Act ("EERA").

My investigation revealed the following facts. Previous to this unfair practice charge, the Charging Party filed an unfair practice charge on May 12, 1986 (Unfair Practice Charge No. LA-CO-367). That charge, and the amended charge of July 9, 1986, alleged that the Respondent failed to provide assistance to the Charging Party concerning his appeal of promotional exam test results. The Charging Party further alleged that after some difficulty in ascertaining that Respondent was his representative, Respondent failed to answer his telephone calls and letters seeking assistance. The Respondent claimed that its president, Richard Keith, did talk to the Charging Party and informed him that Respondent did not pursue appeals of personnel examinations, advising him instead how to pursue his appeal individually. The Respondent took the position that it had no obligation affirmatively to assist the Charging Party because the collective bargaining agreement restricted grievances to violations of express terms of the agreement, which did not contain provisions applicable to Personnel Commission examinations.

The parties entered into a settlement agreement following the Informal Conference before Public Employment Relations Board (PERB) Administrative Law Judge Barbare E. Miller on August 15 1986. The settlement agreement provided, in pertinent part,

the following:

> 1. A representative of the Association [Respondent] and the Association's attorney will meet with Mr. Brown and representatives from either the District or the Personnel Commission to assist Mr. Brown in getting the information to which he is entitled regarding the examination for Plant Security Supervisor.
>
> 2. Article IV, Section 5.0 of the collective bargaining agreement between the District and the Association provides that "[t]he District shall provide to POA twice yearly a listing of employees in the unit, including name, employee number, class code and title, work location, and mailing address." When the Association receives that list, it shall communicate with all new employees, informing them that they are represented by the Association and how to contact the Association. The communication will also contain information about the collective bargaining agreement and the benefits which attach to membership in the Association or employment in the unit. The information described above shall also be provided to Mr. Brown on or before September 3, 1986.

On September 6, 1986, approximately, the Respondent mailed the Charging Party the information concerning membership rights and representation as described in paragraph 2 of the Settlement Agreement, cited above. The Charging Party is not alleging that this unfair practice charge is predicated on the failure to fulfill the terms of paragraph 2 of the settlement agreement.

Charging Party does allege that Respondent has breached the terms of paragraph 1 of the settlement agreement by not scheduling a meeting between himself and the Association and the District in a timely manner. First, he contends that the settlement agreement obligated the Respondent to schedule the meeting with the District before September 3, 1986. Although acknowledging that this date appears in the second rather than the first paragraph of the settlement agreement, he claims that the Respondent's attorney, Nancy Culver, orally represented to the Administrative Law Judge that the meeting referred to in ParaGraph 1 could be arranged by the same date. In any event,

he claims that this is the true intent of the settlement agreement. Even if this is not the case, he argues in the alternative that the Respondent delayed unreasonably in attempting to arrange for the meeting.

This claim is based on his allegation that he called Culver on approximately August 22, 1986 to ask when the meeting would be arranged. He alleges he was told that it would be arranged by September 3, 1986. Respondent acknowledges the telephone conversation but alleges that Culver made no promise to have the meeting by September 3, 1986. She claims she did assure him that she would contact him to determine his availability after the president of the Association returned from his vacation. Keith returned from his vacation on September 2, 1986, approximately. Culver alleges that she attempted to contact Brown and left a message on Charging Party's answering machine in late September. Charging Party alleges that he received no further communication from Culver from the August 21 conversation until after he filed this unfair charge on October 27, 1986. Charging Party made no other attempts to contact Culver to determine the progress in scheduling the meeting, prior to filing this charge.

Following the filing, Charging Party received a letter from Culver, dated November 25, 1986 requesting to know whether he would prefer to proceed by having the District respond in writing or at a meeting. He was also asked about his availability for a meeting. Charging Party responded in writing by a letter dated December 1, 1986, stating that he would prefer a written response initially and that he would be available on one or two days notice for a meeting.

Based on the facts described above, the allegation that the Association breached the settlement agreement contained in this chare fails to state a prima facie violation of the EERA for the reasons which follow.

Section 3541.5(b) of the EERA states:

> The board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of such an agreement that would not also constitute an unfair practice under this chapter.

The PERB has held that this requirement prohibits issuance of a complaint unless the facts in the charge state an independent violation of the EERA in addition to a possible violation of the agreement. Baldwin Park Unified School District (1979)

PERB Decision No. 92. Although the Association's failure to schedule the meeting at the time the unfair practice charge was filed may constitute a violation of the settlement agreement, there is no evidence which indicates that these facts give rise to an independent unfair practice. In order to state an independent unfair practice the Charging Party would have to show that the Association acted in an "arbitrary, capricious or bad faith" manner by not scheduling the meeting according to Charging Party's understanding of the settlement agreement.* Rocklin Teachers Professional Association (1980) PERB Decision No. 124. Without such evidence EERA section 3541.5(b) prevents issuance of a complaint in this case.

As stated in Rocklin, "[a] prima facie case alleging arbitrary conduct violative of the duty of fair representation must at a minimum include an assertion of sufficient facts from which it becomes apparent how or in what manner the exclusive representative's action or inaction was without a rational basis or devoid of honest judgment." Because the date of September 3, 1986 appears in a different paragraph from the one obligating the Association to arrange a meeting with the District, the Association was not without a rational basis for believing that that date did not apply to scheduling the meeting.

Considering the paucity of communications between the parties up to the date the unfair chare was filed on October 27, 1986, it does not appear that in failing to arrange the meeting by that date the Respondent acted in a capricious or bad faith manner toward the Charging Party. Since the unfair chare was filed, the Respondent has taken steps toward fulfilling the terms of the settlement agreement. Even if the Respondent may have delayed in seeking to obtain the information desired, no facts are alleged from which it can be inferred that such delay is motivated by bad faith on its part. The mere fact that the Respondent's conduct is "negligent, unwise or otherwise unsatisfactory to the charging parties," does not establish a prima facie case. Los Angeles City and County School Employees Union (1983) PERB Decision No. 341, at p. 11.

For these reasons, the chare as presently written does not

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* Although the Charging Party cites section 3543.6(c) of EERA as the basis for the violation, that section does not provide a remedy for a member of a negotiating unit against the exclusive representative. However, to the extent that section 3543.6(b) does provide a remedy by ensuring against violations of the duty of fair representation, the chare is considered on the basis of this theory. Rocklin Teachers Professional Association, supra, at p. 3.

state a prima facie case. If you feel that there are any factual inaccuracies in this letter or any additional facts which would correct the deficiencies explained above, please amend the charge accordingly. The amended chare should be prepared on a standard PERB unfair practice chare form clearly labeled First Amended Chare, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended chare must be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended chare or withdrawal from you before February 10, 1987, I shall dismiss your chare. If you have any questions on how to proceed, please call me at (213) 736-3127.

Sincerely,

Donn Ginoza
Regional Attorney