STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

DR. CHENG T. WANG,	)	
	)	
Charging Party,	)	Case No. LA-CO-11-H
	)	
v.	)	PERB Decision No. 692-H
	)	
CALIFORNIA FACULTY ASSOCIATION,	)	July 26, 1988
	)	
Respondent.	)	
	)	

Appearances; Dr. Cheng T. Wang, on his own behalf; Reich, Adell & Crost by Glenn Rothner for California Faculty Association.

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 that the Respondent violated section 3571.1, subdivisions (b) and (e) of the Higher Education Employer-Employee Relations Act. We have reviewed the dismissal and, finding it to be free of prejudicial error, adopt it as the Decision of the Board itself.

The unfair practice charge in Case No. LA-C0-11-H is hereby DISMISSED WITHOUT LEAVE TO AMEND.

By the Board

STATE OF CALIFORNIA GEORGE DEUKMEJIAN, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD
San Francisco Regional Office
177 Post Street, Suite 900
San Francisco, California 94108
(415)557-1350

December 14, 1987

Dr. Cheng T. Wang

Re: Wang v. California Faculty Association;
Unfair Practice Charge No. LA-C0-11-H

Dear Dr. Wang:

On September 16, 1987, you filed the above-captioned unfair practice charge against the California Faculty Association (CFA or Association) alleging that CFA violated section 3571.1(b) and (e) of the Higher Education employer-employee Relations Act (HEERA or Act) by failing to satisfy its duty of fair representation.

I indicated to you in my attached letter dated November 6, 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 November 20, 1987, it would be dismissed.

In response to my letter, I received three separate mailings including numerous attachments.

Certain items raised in your letter dated November 11, 1987, concern alleged factual inaccuracies in my letter to you dated November 6, 1987.[1] You assert that you were not advised by University President Steven Horn on or about March 12, 1987 of your impending dismissal, but rather were so advised by June Cooper. You contend that I failed to include the fact

[1] In Your letter dated November 11, 1987, you indicate that the instant charge "will not be amended." Nonetheless, you have included certain factual allegations that take issue with my findings and conclusions. I have considered each of these submissions as amendments to your charge and have measured them against the requirements of a prima facie case.

that you instructed Tom Angell, the University president's designee, to check with the female student who had lodged the complaint against you. You contend that the letter from Christine Maitland, CFA grievance/arbitration specialist, was dated March 20, 1987, not received on that date. You contend that in your letter to President Horn on or about March 23, 1987, you referred to possible legal action against the parties involved. You also dispute the fact that you advised Horn that you were not a CFA member. You allege that in your discussion with Maitland on or about April 27, 1987, you did not disagree on whether you should file a grievance against Cooper. You take issue with the statement that Maitland assisted you in completing the contract grievance form. You assert she gave you the blank form, a booklet which included instructions on how to file a charge and, to ensure that CFA would not be your representative, entered the word "none" in the blank space for designation of your representative. You indicate that prior to the meeting on April 27, 1987, during which you discussed the possibility of filing a grievance against Cooper, you complained to Maitland that she was unavailable. You claim Maitland said she was unable to return your call but, you find Maitland's assertion difficult to believe. You also contend that on April 27, 1987, you mentioned the appeal possibility with Maitland and she indicated that the deadline had passed. You contend that you argued with her about how many days were permitted for appeal. You allege that between April 27 and May 19, 1987 you made several calls to CFA and Maitland but received no response on the representation issue. You object to my statement that you indicated your intention to challenge the University in a civil lawsuit. You indicate the intention you conveyed was to probably or possibly challenge the University. You argue that ~~on or about April 14~~, 1987, you made a request of CFA that your grievance proceed to arbitration and that you wanted a meeting convened with Paul Worthman, CFA Associate General Manager, to "discuss the problem with Maitland." You indicate that you also wanted to discuss "the representation issue." You correctly indicate that your appeal of CFA's decision declining to take your case to arbitration was dated August 24, 1987, rather than as I indicated, August 8, 1987. You assert that your request of September 5, 1987, to CFA General Manager Edward Purcell was based on the University's failure to supply Maitland, rather than you, with documents sent to the University. You contend that you did not refer to Maitland's failure to return telephone calls on March 11 or 12, 1987 because you did not leave a message. You take issue with my statement that you failed to attend "at least one meeting." You allege there was only one meeting arranged, March 11, 1987, which you decided not to attend.

None of the factual inaccuracies or omissions noted above is sufficient to demonstrate that CFA acted in an arbitrary, discriminatory or in bad faith manner. For example, there is no legal significance in the fact that you advised the University of a "possible" challenge rather than a lawsuit. Nor is there any significance between a request to discuss the "problem with Maitland" as opposed to a desire to discuss "the representation issue." Nor is there significance in the fact that you raised with the University its failure to supply Maitland with documents rather than to supply you with documents. In all, the specific factual corrections noted above do not demonstrate conduct on the part of CFA that rises to a breach of the duty of fair representation.

You raise other alleged factual inaccuracies that bear on CFA's conduct. You allege that Maitland's statement in her March 20, 1987 letter is untrue to the extent that she said she discussed timelines with you on the telephone. This disparity is not critical. As you indicate, you were entitled to appeal the decision of University President Horn within ten days of your receipt of the President's decision. Horn's decision was dated March 12, 1987. Based on receipt of Maitland's March 20 letter on the same day, you calculate that you had 2 days within the 10 day period to appeal after receipt of Maitland's letter. While you may have desired more time to prepare your appeal, nothing contained in the allegations persuades me that you would have been unable to submit a timely appeal. Moreover, assuming Maitland did not discuss appeal rights with you in her telephone conversation prior to her letter, you were advised on several occasions of the appeal timelines. In the letter dated February 23 from Horn issued by Cooper, paragraph VI plainly spells out your appeal rights. This was reiterated in the letter dated March 12, 1987 from Horn. Your awareness of the appeal timelines was not dependent upon Maitland's letter and thus I conclude that, by advising you of the necessity of heeding appeal timelines by letter dated March 20, 1987, this conduct does not establish a breach of the duty of fair representation.

Many of the factual assertions and arguments set forth in your submission of November 11, 1987, concern whether or not Maitland was aware of your desire to appeal. There is no contention in your charge upon which the duty of fair representation violation is based that suggests Maitland was unaware of your intent to appeal. In other words, Maitland's

conduct, with regard to your appeal of the disciplinary decision of the University, did not rest on her assertion that she lacked knowledge of your intent to appeal. Thus, all of the additional factual allegations demonstrating that Maitland was aware of your desire to appeal are irrelevant to your charge that she failed to provide fair representation.

You also take issue with the conclusion that Maitland adequately assisted you in completing your grievance. As you note, she provided you a blank grievance form and a booklet instructing you on how to file a grievance. Since the contract permits you, as an individual employee, to file a grievance, the conduct you describe with regard to the grievance form and Maitland's assistance does not rise to the level sufficient to establish a breach of the duty of fair representation.

You also take issue with my conclusion that Maitland's belief on March 20, 1987 that you had elected to proceed on your own behalf was not unreasonable. You correctly note that one basis for my conclusion rests on the fact that on March 23, 1987, 3 days after Maitland's letter of March 20, 1987, you told University President Horn that you were not a CFA member and would not follow the appeal procedures. You are quite correct that Maitland could not have been aware of your correspondence with Horn on March 20, 1987. Nonetheless, sufficient evidence supports the conclusion that Maitland's belief was not unreasonable. After you received notice of the pending disciplinary action, Maitland telephoned you on or about March 4, 1987 and set up a meeting for March 11, 1987 with Angell. Maitland discussed with you her opinion that you should not make written submissions to the University in her absence. You did so. Maitland arranged a meeting with Angell, the one individual with whom you were entitled to meet prior to the University President's decision. You canceled that meeting in her absence. On May 19, 1987, you advised Purcell of your dissatisfaction with Maitland and your decision not to fight the discipline procedure because the issue of Cooper's conflict of interest was not addressed. You told Purcell you intended to possibly challenge the University's decision in a civil matter and that you intended to pursue certain grievances. In sum, you were dissatisfied with Maitland's representation and failed to heed her advise. You cancelled a critical meeting in her absence and made submissions against her recommendations. Based on these factors, Maitland did not act unreasonably when she wrote you on March 20, 1987, indicating her belief that you elected to proceed on your own behalf.

You raise various arguments with regard to CFA's representation policy and your awareness thereof. Pursuant to that policy, CFA recognizes its obligation to represent its members in grievances undertaken as the exclusive representative in grievance procedures reflected in the memorandum of understanding (MOU). With regard to its representation in other forums, CFA indicates it will, at its discretion and as resources allow, provided advice and consultation to members of the bargaining unit. With regard to your grievances initiated under the MOU, I stand by the statement made in my letter to you dated November 6, 1987. The facts as alleged establish no failure on the part of CFA to advise you of your representational rights under CFA's policy. The right to seek review of CFA's decision attaches when the decision to proceed to arbitration is made. It is at that juncture, following the last pre-arbitration step of the grievance procedure that you were entitled to the Committee's review. Contemporaneous with CFA's decision not to arbitrate your grievance, you were made fully aware of the Association's representation policy.

To the extent you contend that you were not advised of the policy when Maitland wrote to you on March 20, 1987, you are mistaken. The procedure outlined in CFA's representation policy refers to those instances where CFA declines to provide representation. This does not encompass the situation where an individual employee wishes to protest the individual representative a union has provided. I know of no case establishing that a union breaches its duty of fair representation by failing to provide an individual with a union representative of his/her choosing. See Castelli v. Douglas Aircraft Co. (9th Cir. 1985) 118 LRRM 2717. For reasons you have articulated, you were dissatisfied with the representation Maitland provided and gave her the impression you had made a determination to proceed without her as your representative. In essence, what you are now contending is that you wanted a CFA representative other than Maitland. The fact that CFA was unwilling to provide you with a representative of your choice does not establish a breach of the duty of fair representation.

Among the documents you submitted on November 11, you indicate that the parties' MOU does not satisfy the requirements of Education Code section 89542.5, which you indicate requires an independent faculty committee hearing. In conjunction with this Education Code provision, you provided me with a copy of a letter dated October 9, 1987, from B. Robert Kreiser, Associate

Secretary of the American Association of University Professors, (AAUP) addressed to University President Horn. Kreiser indicates that neither of the alternative routes of appeal of the University's disciplinary action afford you sufficient due process safeguards as required by the 1958 AAUP Statement on procedural standards and faculty dismissal proceedings.

PERB's jurisdiction in a case where the charging party alleges a breach of the duty of fair representation is to analyze the allegations in the charge to determine whether the conduct was arbitrary, discriminatory or in bad faith. PERB does not have jurisdiction over violations of the Education Code or over policy statements issued by AAUP. Thus, this new allegation does not establish a breach of CFA's duty to you.

Additional facts raised in your letter of November 11, 1987, likewise do not alter my conclusion. The fact that Maitland in her letter of March 20, 1987 referred to your engaging a lawyer does not, contrary to your assertion, establish that the case was difficult and thus, was beyond Maitland's abilities. Nor is it relevant that it is costly to retain a private attorney to represent you. In sum, the factual allegations in your November 11, 1987 submission do not add facts sufficient to support a conclusion that CFA breached its duty of fair representation.

On or about November 20, 1987, I received a second letter regarding this matter dated November 17, 1987. Upon review of your records, you allege that one hour prior to the meeting with Angell on March 11, 1987, you arranged for Maitland to come to. your office. You allege that although you canceled the meeting with Angell, you never canceled the meeting with Maitland and she did not show up. You indicate that after you canceled the meeting with Angell, Maitland made no effort to contact you and you were unsuccessful in your efforts to contact her. These facts do not change my opinion that CFA acted in a way consistent with its duty of fair representation. It is not unreasonable to conclude that the hour meeting in your office with Maitland prior to your meeting with Angell was for the purpose of preparing for the meeting with Angell. Inasmuch as you canceled that meeting, Maitland's failure to appear for that meeting does not evidence unreasonable or arbitrary conduct. Facts relating to your efforts to contact Maitland after March 11, 1987, are the same as those that appear in the original change and the amendments and thus do not alter the conclusion I reached based on your prior submissions.

In your letter dated April 17, 1987 you also refer to a conversation with Bob Winchell, CFA campus president, in April 1987 regarding the lawyer referral service. This fact is presented to establish that you never ruled out an appeal. As noted above, Maitland's or CFA's activity on your behalf was not based on their assertion that they were unaware of your intent to appeal. Maitland perceived that you had elected to proceed without her representation and acted accordingly.

Your second submission also refers to the fact that you failed to tape record a meeting with Maitland on April 27, 1987. The allegations in this document do not indicate the content of that meeting or why it is significant to accessing CFA's conduct.

Also included in this document is reference to the CFA Representation Committee's determination not to arbitrate your contract grievance. You indicate that in the attached letter dated November 12, 1987, the signature of the Representation Committee chair, Joan Edelstein, is not her signature, and you also indicate that her letter fails to refer to all of the contract provisions you attest are raised by your grievance. You also claim that since the Committee met on October 11, 1987, their letter to you dated November 12, 1987, is late and no explanation for this lateness has been offered. To the extent that you wish me to consider the Committee's decision not to pursue your grievance to arbitration as an amendment to this charge, I find no indicia of arbitrary, discriminatory or bad faith conduct based on Edelstein's letter to you. She indicates that the Committee unanimously voted to sustain the decision of the Associate General Manager not to arbitrate your grievance because the Committee could not identify any evidence of any contractual violation in this matter. Edelstein also notes that you determined not to follow the disciplinary procedure to contest your termination and, therefore, CFA is unable to provide further assistance to you at this time. You have alleged no facts to assist me in my determination of the Committee's assessment of your contractual grievance. Thus, I find nothing in this filing to alter my conclusion that the facts you have alleged in your original charge and in the two documents you forwarded to me establish a prima facie case of a violation of the duty of fair representation.

On or about December 1, 1987, I received a third document from you. Although this document was received beyond the deadline date, November 20, 1987, I will nonetheless consider this document in assessing the sufficiency of your allegations. You provided me with a document dated November 23, 1987, from Glenn Rothner, an attorney with Reich, Adell & Crost. In this letter, Rothner chastises you for personally contacting Virginia Ann Chadwick, CFA president at the Long Beach campus. Rothner asks that you refrain from personally contacting Chadwick inasmuch as his firm is the designated representative of CFA. You also include a letter from you dated November 26, 1987 in which you chastise CFA for using faculty members' funds to hire an attorney. There is also attached to this document an undated letter from Chadwick indicating that your letter to her dated November 17, 1987 was forwarded to Rothner.

None of this information has any relevance to your charge that CFA failed to provide you with adequate representation in your dispute with the University.

For the reasons stated herein, as well as the reasons stated in my letter to you dated November 6, 1987, the allegations in your charge fail to establish the prima facie case that CFA breached its duty of fair representation in violation of the HEERA.

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 filing (section 32135). Code of Civil Procedure section 1013 shall apply. 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 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 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,

John Spittler
Acting General Counsel

By _____
Carol A. Vendrillo
Staff Attorney

Attachment

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

November 6, 1987

Dr. Cheng T. Wang

Re: Wang v. California Faculty Association
Unfair Practice Charge No. LA-C0-11-H

Dear Dr. Wang:

I am in receipt of the above-captioned charge filed on September 16, 1987, in which you allege that the California Faculty Association (CFA or Association) violated section 3571.l(b) and (e) of the Higher Education Employer-Employee Relations Act (HEERA or Act) by failing to satisfy its duty of fair representation.

My investigation has revealed the following facts. You have been employed by the California State University at Long Beach (University) as an Associate Professor of electrical engineering. On or about February 23, 1987, based on allegations of sexual harassment, you received notice from the University of pending disciplinary action Thereafter, on or about March 12, 1987, you were advised by University President Stephen Horn that you would be dismissed from employment as of May 29, 1987. On or about March 4, 1987, you were called by Christine Maitland, CFA Grievance/Arbitration Specialist. Maitland advised you not to do anything regarding the pending disciplinary request until she returned from her vacation. On or about March 5, 1987, against Maitland's advice, you submitted a response to Tom Angell, the University President's designee. You advised Angell that you felt it was not necessary to meet with him but, rather, requested a meeting at the University President's level. You instructed Angell to write his report based on the information provided and on the basis of the complaining witnesses' version of the facts. You further advised him that you were taking this action against the advise of your union representative.

On or about March 20, 1987, you received a letter from Maitland indicating that she had received a copy of the above-referenced response sent to Angell. She also indicated as follows:

> Since you cancelled our meeting and the one I had set up with the administration, I assume you intend to represent yourself in this matter. You have received a copy of the disciplinary procedures. As I told you on the phone, it is necessary that the timelines in the procedure be strictly followed. It is necessary that you and/or your attorney process the appeal within those timelines.

On or about March 23, 1987, you addressed correspondence to the University President taking issue with the dismissal recommendation. You indicated that since you were not a CFA member, you would not follow the appeal procedures to "fight against the parties involved."

On or about April 27, 1987, you met with Maitland. You advised Maitland that you wished to file grievances against several parties. Maitland advised you against initiating any action against a female student who levied the sexual harassment charges against you. You and Maitland also disagreed on whether you should file a grievance against June Cooper, the University Vice President who was responsible for initiating the disciplinary request after hearing of the students' complaints. During this meeting, Maitland assisted you in completing a contract grievance form and entered the word "none" in the blank space reserved for the name of the employee's representative. Maitland gave you instructions on how to proceed and a booklet about the negotiated memorandum of understanding. As a result of your interaction with Maitland, you acquired the belief that she could not be impartial and you requested another representative. Maitland denied that request, telling you that Paul Worthman, CFA Associate General Manager, was her superior at CFA. According to your charge, Maitland said you should file your complaint yourself and you told her that that meeting would be the last time you would meet with her unless or until Worthman directed her to conduct herself differently.

On or about May 19, 1987, you addressed a letter to CFA General Manager Edward Purcell indicating your dissatisfaction with Maitland. You indicated that Maitland rejected your requests for a change in representative on two occasions and failed to return a telephone call on one occasion. You advised Purcell of your decision not to follow the discipline procedure "because the issue of conflict of interest was not addressed."

You indicated your intention to challenge the University's decision in a civil law suit and your intention to pursue certain grievances. You requested that CFA appoint a representative other than Maitland to assist you in processing these grievances.

On or about May 28, 1987, Purcell responded to your letter indicating that CFA would not assume representation of you at the second level of the grievance procedure. Purcell indicated that the grievance at issue had, in his assessment, no valid contractual basis and would not serve to undo or modify the previously determined disciplinary action which you chose not to appeal. Noting that the contract permitted you to proceed without CFA's involvement at the second level of the grievance procedure and noting your unwillingness in the past to accept CFA's advice, Purcell indicated that CFA declined to represent you at that time.

On or about May 29, 1987, you wrote to Purcell taking issue with various facts in his letter. You indicated your belief that only one meeting with CFA did not take place and that you were warned only once about the dismissal appeal timelines. You asked Purcell to advise you as to CFA's intent to represent you in arbitration of the grievances filed.

On or about June 2, 1987, Purcell informed you of his belief that the second level of the grievance procedure had not been completed. He advised you to contact CFA when such decision issued and to provide him with a copy of that decision and with any other documents or arguments you wished to make.

A level two grievance meeting was held on June 26, 1987. Thereafter, you received the University's decision at that step and, on or about July 14, 1987, you requested that CFA proceed to arbitration on your behalf. You also requested that a meeting be convened with Worthman in order to discuss "the problem with ms. maitland (sic)."

On or about August 11, 1987, you again wrote to Worthman requesting a meeting to discuss your grievance. On or about August 18, 1987, you wrote to Purcell requesting a meeting to discuss your difficulty with Maitland. You indicated that if CFA did not submit a timely response, you would consider it CFA's decision not to represent you.

During this time period, you were sent two letters from CFA which apparently crossed in the mail with the two letters you sent, described in the paragraph above. On August 14, 1987, Roberta Frye, CFA Administrative Assistant, advised you that CFA had submitted your grievance to arbitration in order to

preserve the time limits for such filing. That letter indicated that CFA had not completed a thorough review of your case and had made no determination as to whether it would pursue arbitration. You were advised that CFA would notify you once its decision was made and would advise you of the procedure to appeal to the CFA Representation Committee should CFA decide not to take your case to arbitration. Enclosed with Frye's letter was a copy of the CFA Representation Policy.

On or about August 17, 1987, you received a letter from Worthman indicating that CFA would not pursue your contract grievance to arbitration. Worthman stated that the matter you sought to arbitrate should have been raised in your disciplinary appeal. You were advised of your right to appeal Worthman's decision to the CFA Representation Committee in writing within 14 days of receipt of his letter. By letter dated August 8, 1987, you appealed CFA's decision declining to take your case to arbitration.

On or about September 5, 1987, you made a request to Purcell that CFA re-open the case regarding the proposed disciplinary request even though the time period for appeal of that decision had pasted. The two reasons for this request delineated in this letter were (1) the negligence of CFA representative in failing to supply you with the CFA Representation Policy in March 1987; and (2) the University's failure to supply you with documents you sent to your CFA representative.

On or about September 10, 1987, Worthman advised you that he had forwarded your appeal to CFA's Representation Committee. He also represented that, according to Maitland, you were fully informed of your representation rights under CFA's Policy.

Finally, on or about September 11, 1987, you wrote a letter to Purcell outlining your disagreement with Worthman's assertion regarding Maitland. You strongly contend that Maitland failed to inform you of the Representation Policy and note her failure to mention that Policy in her letter dated March 20, 1987, and her entry in the grievance form indicating "none" as the name of your representative. You also indicate that Maitland was unavailable when you telephoned her at the Long Beach campus, that CFA continued to direct you to call Maitland because she was assigned to that campus and that Maitland was not at home when you telephoned her there.

Based on the foregoing, the factual allegations set forth in this charge fail to allege a prima facie violation of the HEERA for the following reasons. In order to establish that the Association failed to satisfy its duty of fair representation and thus committed an unfair practice under the HEERA, you must

allege, in a clear and concise statement of facts, that CFA's conduct in representation was arbitrary, discriminatory or in bad faith. California State Employees' Association (Dees) (1985) PERB Decision No. 496-H.

You allege that Maitland failed to represent you adequately in the disciplinary action initiated by the University. In support of this assertion, you refer to Maitland's failure to return telephone calls and what you perceive to be her withdrawal as your representative by her letter dated March 20, 1987. These facts do not establish a breach of the duty of fair representation. In Vaca v. Sipes (1967) 386 U.S. 171, the United States Supreme Court held that a union may not process a meritorious grievance in a perfunctory manner. While Maitland may not have been available to answer all your calls, the conduct you describe in the charge cannot reasonably be characterized as perfunctory. Maitland discussed your case with you and offered you her opinion as to how to proceed. You declined to follow her advice and failed to attend at least one meeting Maitland had arranged.

Moreover, her belief on March 20, 1987, that you had elected to proceed on your own behalf, was not unreasonable. It was your decision to ignore Maitland's recommendations and to file the grievance rather that pursue the disciplinary appeal. Indeed, you so advised the University President of this election by your letter dated March 23, 1987, and similarly advised Purcell by letter dated May 19, 1987. Finally, Maitland's warning to you regarding the importance of the time limits in appealing you disciplinary action belies your claim that Maitland acted with disregard for your interests. Thereafter, she met with you and assisted you in completing the grievance form. Thus, I do not find from the allegations in the charge that Maitland declined to proceed as your representative. In sum, Maitland's conduct does not rise to the level sufficient to demonstrate a prima facie breach of the Association's duty.

You also allege that CFA breached its duty by failing to notify you of your right to use the Representation Policy until August 14, 1987, well after Maitland discontinued her representation status. You have provided me with a copy of the CFA Representation Policy. It obligates CFA to provide advise to potential grievants in the initial stages of the proceedings. This was done. Maitland gave you advice which you elected to disregard. The Policy also sets forth that requests for representation "following the last pre-arbitration step of the grievance procedure" be made in writing to the General Manager. The decision of the General Manager or his/her designee must be made in writing within thirty days. At this point in the proceeding, a unit member may contest the General

Manager's decision and submit an appeal to the Select Committee of the CFA Statewide Representational Panel. Decisions of the Select Committee are final.

Assuming the facts as you have alleged, Maitland's failure to notify you of the appeal procedure under the Representation Policy was not unreasonable nor was it in anyway harmful to your rights. First, Maitland was assisting you in your appeal of the disciplinary matter. Your inability to remedy that disciplinary decision rests not with your representative but stems from your decision not to pursue the matter because of your desire to file a grievance instead. Second, assuming that CFA was still obliged to represent you in your grievance processing, a matter which you undertook on your own volition and which you are entitled to do without CFA's involvement, no failure to fully advise you of your representational rights under CFA's policy is demonstrated. The right to seek review under the terms of the Representation Policy attaches when the decision to proceed to arbitration is made. In the words of the Policy, the decision which is reviewed by the Representation Committee is that of the General Manager "following the last pre-arbitration step of the grievance procedure". Thus, only after you were notified of the decision at the second step, on or about July 14, 1987, and only after CFA decided not to take your grievance to arbitration were you entitled to seek the review of the Committee. In her letter of August 14, 1987, Frye explained your rights under the Policy and forwarded a copy of that Policy with a promise to notify as soon as CFA had made its decision regarding arbitration. Thereafter, CFA did notify you and, in his letter of August 17, 1987, you were again advised of your appeal rights to the Committee. In sum, assuming Maitland did not advise you of the availability of the Committee's review in March, you had no decision to appeal to the Committee at that time and thus were not harmed by that alleged failure. When it was appropriate to use the representation committee, you were informed on how to proceed.

For these reasons, Charge No. SF-CO-16-H, as presently written, does not 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 charge should be prepared on a standard PERB unfair practice charge clearly labeled First Amended Charge, contain <u>all</u> facts and allegations you wish to make, and be signed under penalty of perjury by the Charging Party. The amended charge must be served on the Respondent and the original proof of service must be filed with

PERB. If I do not receive an amended charge or withdrawal from you before November 20, 1987, I shall dismiss your charge. If you have any questions on how to proceed, please call me at (415) 557-1350.

Sincerely,

Carol A. Vendrillo
Staff Attorney

3233t