

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



WILLIAM G. FARRAR, JR.,)	
)	
Charging Party,)	Case No. LA-CO-485
)	
v.)	PERB Decision No. 797
)	
UNITED TEACHERS-LOS ANGELES,)	March 22, 1990
)	
Respondent.)	

Appearances: William G. Farrar, Jr., on his own behalf; Law Offices of Lawrence B. Trygstad by Richard J. Schwab, Attorney, for United Teachers-Los Angeles.

Before Craib, Shank, and Camilli, Members.

DECISION

CAMILLI, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal filed by William G. Farrar, Jr. (Farrar) to a Board agent's dismissal of his unfair practice charge. We have reviewed the entire record in this case, and affirm the dismissal of the unfair practice charge for the reasons set forth below.

DISCUSSION

Farrar was employed by the Los Angeles Unified School District (District) beginning in May 1986 as a probationary first grade teacher at the Miles Avenue School. Toward the end of the 1987 school year, Farrar's working relationship with the District administration began to deteriorate. On February 1, 1988, the assistant principal charged that Farrar was reading aloud to students too much and that his teaching was otherwise seriously

deficient. On February 22, 1988, Farrar received a Notice of Unsatisfactory Act/Service.

On March 11, 1988, Farrar filed a grievance against the District, alleging violations of the collective bargaining agreement between the District and United Teachers-Los Angeles (UTLA). Farrar was represented by a UTLA representative throughout the grievance process, and the case was ultimately taken to arbitration on December 12 and 14, 1989. On March 15, 1988, Farrar was notified that the District did not intend to reelect him for the upcoming school year.

On June 9, 1989, Farrar filed an unfair practice charge with PERB against UTLA, alleging that UTLA failed to adequately represent him in his grievance against the District, and, therefore, violated the Educational Employment Relations Act (EERA) section 3543.6.

Farrar filed amended charges on
¹EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

Section 3543.6(b) is the appropriate statutory vehicle for a unit member to attack conduct of the exclusive representative alleged to be violative of the duty of fair representation. The duty itself, however, arises out of section 3544.9 of EERA. (Rocklin Teachers Professional Association (1980) PERB Decision No. 124, at p. 3.)

Section 3543.6(b) states:

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

August 25, 1989 and October 24, 1989, alleging: (1) UTLA conspired with the District to deprive him of his right to grieve under the contract; (2) the UTLA representative failed to file a separate grievance alleging a violation of section 11.0(b) of the contract providing for progressive discipline and prohibiting disparate treatment; (3) the UTLA representative failed to enter into evidence certain evidence which the charging party deems "critical" or "conclusive"; (4) UTLA incorrectly advised Farrar to maintain confidentiality regarding his grievance; and (5) UTLA deprived Farrar of his right to procedural due process by (a) representing him through the grievance process and the arbitration hearing, thereby displacing Farrar's chosen representative, and depriving him of the right to choose his own representative or to represent himself, (b) failing to bring his case to arbitration until 10 months after the grievance was filed, and 5 months after his termination, and (c) failing to have a transcript of the arbitration hearing made.

The Board agent dismissed the charge for failure to state a prima facie case. Farrar filed exceptions, reiterating to a

to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

Section 3544.9 states:

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.

great degree the legal and factual arguments previously made. After a thorough review of the exceptions, the Board has determined that any factual errors or omissions raised in the exceptions are not prejudicial. Several of the factual incidents raised in both the charge and the exceptions fall outside of the statute of limitations and are therefore outside of our jurisdiction. (California State University, San Diego (1989) PERB Decision No. 718-H.) The charge was filed on June 9, 1989; therefore, any events occurring prior to December 9, 1988 are not within our jurisdiction to consider, except as they may provide background information to the incidents occurring within the statutory period. (Sacramento City Unified School District (1982) PERB Decision No. 214, at p. 4, fn. 4.)

The Board has held that a breach of the duty of fair representation occurs when a union's conduct toward a member of the bargaining unit is arbitrary, discriminatory, or in bad faith. (Rocklin Teachers Professional Association, supra; PERB Decision No. 124, at p. 7.) In the context of grievance handling, the Board has defined the scope of the duty as follows:

. . . Absent bad faith, discrimination, or arbitrary conduct, mere negligence or poor judgment in handling a grievance does not constitute a breach of the union's duty.
[Citations]

A union may exercise its discretion to determine how far to pursue a grievance in the employee's behalf as long as it does not arbitrarily ignore a meritorious grievance or process a grievance in a perfunctory fashion. A union is also not required to process an employee's grievance if the chances for success are minimal. [Citations]

(United Teachers-Los Angeles (Collins) (1982)
PERB Decision No. 258, at p. 5.)

In addition, in order to show a prima facie case of breach of a union's duty of fair representation, the charging party must present facts which would justify a finding that the union acted without a rational basis or in a way that is devoid of honest judgment. (Reed District Teachers Association. CTA/NEA (Reyes) (1983) PERB Decision No. 332, at p. 9; also California Faculty Association (Pomerantsev) (1988) PERB Decision No. 698.) The Board has held that when a union does undertake a grievance, the failure to introduce every favorable document or to raise every argument deemed significant by the charging party does not amount to a breach of the duty of fair representation. (California Faculty Association (Mirhady) (1989) PERB Decision No. 746-H.)

In addition,

. . . denial of a member's request for a particular attorney, without more, does not establish arbitrary, discriminatory or bad faith conduct on the part of the employee organization.
(United Teachers-Los Angeles (Bracey) (1987)
PERB Decision No. 616, at p. 8 of the Warning Letter.)

In the present case, Farrar failed to allege facts which demonstrate that UTLA's representative acted in an arbitrary or discriminatory manner, or in bad faith, in representing him with regard to his grievance. The facts alleged are insufficient to establish the existence of a conspiracy between UTLA and the District to deprive Farrar of his right to pursue his grievance under the contract. In fact, UTLA pursued Farrar's grievance to

arbitration. As noted above, UTLA's alleged failure to make the arguments and introduce the evidence deemed significant by Farrar is insufficient to establish a breach of the duty of fair representation. There is no indication that any of UTLA's decisions regarding the arguments to be made, or the evidence to be introduced, were made arbitrarily, discriminatorily, or in bad faith. Neither is UTLA's alleged displacement of Farrar's chosen representative for the grievance procedure and arbitration sufficient under PERB law to constitute breach of the duty of fair representation. Finally, Farrar's allegations that UTLA incorrectly advised him, failed to arbitrate his case in a timely manner, and failed to request an arbitration transcript do not suggest arbitrary, discriminatory or bad faith conduct. At most, these allegations suggest mere negligence which, as discussed above, is insufficient to establish a breach of the duty of fair representation.

As the facts alleged by Farrar do not establish a prima facie case of a breach of the duty of fair representation, the Board finds that the charge was properly dismissed.

ORDER

Based upon the entire record in this case, and consistent with the discussion above, it is hereby ORDERED that the charge be DISMISSED WITH PREJUDICE.

Members Craib and Shank joined in this Decision.