STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ANNETTE M. DEGLOW, Charging Party,	)	Case No. S-CE-1298
v.	)	PERB Decision No. 833
LOS RIOS COMMUNITY COLLEGE DISTRICT, Respondent.	)	August 10, 1990

Appearances: Annette M. Deglow, on her own behalf; Susanne M. Shelley, General Counsel, for the Los Rios Community College District.

Before Hesse, Chairperson; Shank and Cunningham, Members.

DECISION

HESSE, Chairperson: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Annette M. Deglow (Deglow) of a Board agent's dismissal of her charge that the Los Rios Community College District (District) discriminated against her by refusing to deliver her personal mail through the inter-campus mail system and thereby violated section 3543.5(a) and (d) of the Educational Employment Relations Act (EERA).[1] We have reviewed the dismissal and affirm it

[1]EERA is codified at Government Code section 3540 et seq. Section 3543.5 states, in pertinent part:

> It shall be unlawful for a public school employer to do any of the following:
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> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purpose of

consistent with the following discussion.

The essence of Deglow's allegations against the District is:[2] (1) as an employee of the District and a member of an uncertified employee organization, Deglow, both as an individual and a member of that organization, publicly challenged the District and exclusive representative regarding employee rights under EERA; (2) the District had an inter-campus mail system used for both administrative communication and distribution of communications between faculty members; (3) the District has always permitted employees to communicate with each other through the inter-campus mail system; and, (4) the District inspected the letters deposited by Deglow and then refused the use of the inter-campus mail system to send individually addressed envelopes. Deglow charges that the District's action in this regard was not only discriminatory in retaliation for the

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> this subdivision, "employee" includes an applicant for employment or reemployment.
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> . . . . . .
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> (d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

[2]For purposes of reviewing the appeal, we assume that the essential facts alleged in the charge are true. (San Juan Unified School District (1977) EERB Decision No. 12.) (Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board.)

exercise of her rights under EERA,[3] but interfered with her right to communicate with her coworkers. She further alleges that the District's actions constituted domination and interference with an employee organization under EERA section 3543.5(d).

Deglow correctly states that the standard for determining whether a discrimination violation of section 3543.5(a) has occurred was enunciated by the Board in Novato Unified School District (1982) PERB Decision No. 210. As explained further in Palo Verde Unified School District (1988) PERB Decision No. 689, to state a prima facie case of discrimination, Deglow must show she participated in protected activity, the employer had knowledge of such participation, the employer took adverse action against her, and that action was motivated, or would not have been taken but for the protected activity. There is no question that Deglow engaged in protected activity. The text of the letters sought to inform individual faculty members about a settlement agreement arising from unfair practice charges she had filed against the recognized bargaining agent regarding the return of agency fee monies. Her charges also allege knowledge of her activities by the District.

However, Deglow does not allege adverse action cognizable under EERA. Rather, the District simply denied the charging

[3]It is not clear from the content of the letter, nor from the charges filed, whether Deglow was sending this as a personal correspondence or on behalf of the uncertified labor organization. However, Deglow's appeal of the regional attorney's dismissal indicates that she is asserting the right of an "individual" to use the inter-campus mail system.

party's request to carry unstamped personal mail through its inter-campus mail system. Notably, EERA provides for the right of access to an employer's facilities only to an employee organization.[4] Moreover, the District was foreclosed from carrying such mail by the United States Postal Regulations as discussed infra. Deglow, in effect, objects to the District's act of refusing to take an illegal action. Refusal to commit an illegal act does not constitute an adverse action under EERA.

In Regents of University of California v. Public Employment Relations Board (1988) 485 U.S. [99 L.Ed.2d 664], the United States Supreme Court addressed the parameters of the Private Express Statutes (18 U.S.C, secs. 1693-1699, 39 U.S.C, secs. 601-606). This statutory scheme acts to establish the United States Postal Service as a monopoly by prohibiting others from carrying letters over postal routes. (Id. at p. 671.) Two exceptions to the general prohibition against private carriage of

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[4]In her charge Deglow did not specifically reference section 3543.1(b) which states:

> Employee organizations shall have the right of access at reasonable times to areas in which employees work, the right to use institutional bulletin boards, mailboxes, and other means of communication, subject to reasonable regulation, and the right to use institutional facilities at reasonable times for the purpose of meetings concerned with the exercise of the rights guaranteed by this chapter.

letters include the "letters of the carrier"[5] and the "private hands"[6] exceptions. In Regents, the court found neither exception to be applicable to a letter from an uncertified union to university employees. For the reasons discussed below, we find that it makes no difference for purposes of these two exceptions whether the sender is an individual employee or an uncertified union.

The Supreme Court clearly defined the private-hands exception, which allows persons or entities other than the United States Postal Service to carry letters, as being an exception that allowed only " . . . gratuitous carriage undertaken out of friendship, not pursuant to a business relationship." (Regents of the University of California v. Public Employment Relations Board, supra, at 99 L.Ed. p. 674.) The court specifically held:

> . . . the private hands exception is available only when there is no compensation of any kind flowing from the sender to the carrier." (Id. at p. 674.)

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[5]The "letters of the carrier" exception is stated at 18 U.S.C, section 1694 [18 U.S.C.S, sec. 1694] and provides, in pertinent part:

> Whoever . . . carries, otherwise than in the mail, any letters or packets, except such as relate . . . to the current business of the carrier . . . shall, except as otherwise provided by law, be fined not more than $50.

[6]The "private hands" exception is codified at 18 U.S.C, section 1696(c) [18 U.S.C.S, sec. 1696(c)]:

> This chapter shall not prohibit the conveyance or transmission of letters or packets by private hands without compensation.

In explaining the concept of compensation as used here, the court noted:

> Thus, "compensation" has been read to encompass the non-monetary consideration that is implicit in a business relationship. (Id. at 675, citing United States v. Thompson 28 F Cas 97 (No. 16,489) (Mass 1846).)

The relationship between the employer and its individual employee is such a business relationship, as it involves the exchange of benefits or a quid pro quo. Thus, the carriage of Deglow's letters is not permitted under this exception.

Furthermore, the documents to be delivered here do not fall within the other exception to the Private Express Statutes; namely the "letters of the carrier" exception. In Regents, the Supreme Court noted that to fall within this exception, the letters must relate to the "current business" of the carrier. The Supreme Court found that a letter from an uncertified union to employees was not the university's business. The content of Deglow's letter is similar enough to those in Regents to conclude that the information contained therein could not be described as the District's current business. As stated by the court in Regents;

> It strains the statutory language to contend that the phrase "current business" includes such activity. (Id. at p. 672.)

Deglow further asserts that the District's actions interfered with her protected rights under EERA section 3543.5(a). As previously stated, there is no right of access for individual employees to use the internal mail system of an

employer.[7] Furthermore, there is no right for an employee to send unstamped letters in contravention of the Private Express Statutes. Therefore, Deglow's claim of the District's interference with "her right to communicate with other instructors" cannot be supported by the District's actions of inspecting and then refusing to carry what it regarded as personal mail.

Likewise, Deglow has put forth no facts to support the charge that the District's conduct involved here violates EERA section 3543.5(d). She gives no indication as to when or in what manner the District's adherence to the postal regulations translated into giving aid to the recognized bargaining organization representing her unit. There are no allegations that the District's conduct tended to influence employees' free choice in organizational matters or provided stimulus in one direction or another to employee organizations. (See Santa Monica Community College District (1979) PERB Decision No. 103, affd. 112 Cal.App.3d 684.)

The unfair practice charge in Case No. S-CE-1298 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Shank and Cunningham join in this decision.

[7]See fn. 4.