

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



FRANK BAKER,)
)
 Charging Party,) Case No. S-CO-237
)
 v.) PERB Decision No. 877
)
 LOS RIOS COLLEGE FEDERATION OF)
 TEACHERS, CFT/AFT,) May 16, 1991
)
 Respondent.)
 _____)
)
 LANCE BERNATH,)
)
 Charging Party,) Case No. S-CO-238
)
 v.)
)
 LOS RIOS COLLEGE FEDERATION OF)
 TEACHERS, CFT/AFT,)
)
 Respondent.)
 _____)
)
 WILLIAM BROWN,)
)
 Charging Party,) Case No. S-CO-239
)
 v.)
)
 LOS RIOS COLLEGE FEDERATION OF)
 TEACHERS, CFT/AFT,)
)
 Respondent.)
 _____)
)
 ANNETTE DEGLOW,)
)
 Charging Party,) Case No. S-CO-240
)
 v.)
)
 LOS RIOS COLLEGE FEDERATION OF)
 TEACHERS, CFT/AFT,)
)
 Respondent.)
 _____)

JOHN DARLING,

Charging Party,

v.

LOS RIOS COLLEGE FEDERATION OF
TEACHERS, CFT/AFT,

Respondent.

Case No. S-CO-241

WILLIAM DIONISIO,

Charging Party,

v.

LOS RIOS COLLEGE FEDERATION OF
TEACHERS, CFT/AFT,

Respondent.

Case No. S-CO-242

DOUGLAS GARDNER,

Charging Party,

v.

LOS RIOS COLLEGE FEDERATION OF
TEACHERS, CFT/AFT,

Respondent.

Case No. S-CO-243

ALFRED J. GUETLING,

Charging Party,

v.

LOS RIOS COLLEGE FEDERATION OF
TEACHERS, CFT/AFT,

Respondent.

Case No. S-CO-244

ROBERT PROAPS,

Charging Party,

v.

LOS RIOS COLLEGE FEDERATION OF
TEACHERS, CFT/AFT,

Respondent.

Case No. S-CO-249

MINA MAY ROBBINS,

Charging Party,

v.

LOS RIOS COLLEGE FEDERATION OF
TEACHERS, CFT/AFT,

Respondent.

Case No. S-CO-250

ELMER SANDERS,

Charging Party,

v.

LOS RIOS COLLEGE FEDERATION OF
TEACHERS, CFT/AFT,

Respondent.

Case No. S-CO-251

DEL WILSON,

Charging Party,

v.

LOS RIOS COLLEGE FEDERATION OF
TEACHERS, CFT/AFT,

Respondent.

Case No. S-CO-252

GLOYD ZELLER,)	
)	
Charging Party,)	Case No. S-CO-253
)	
v.)	
)	
LOS RIOS COLLEGE FEDERATION OF)	
TEACHERS, CFT/AFT,)	
)	
Respondent.)	

Appearances: Frank Baker, Lance Bernath, William Brown, Annette Deglow, John Darling, William Dionisio, Douglas Gardner, Alfred J. Guetling, Elene Holmes, Donald Kent, Bill K. Monroe, Ryan Polstra, Robert Proaps, Mina May Robbins, Elmer Sanders, Del Wilson, Gloyd Zeller, on their own behalf; Robert J. Bezemek, Attorney, for Los Rios College Federation of Teachers, CFT/AFT.

Before Hesse, Chairperson; Camilli and Carlyle, Members.

DECISION

HESSE, Chairperson: This case comes before the Public Employment Relations Board (Board) on appeal by Frank Baker, Lance Bernath, William Brown, Annette Deglow, John Darling, William Dionisio, Douglas Gardner, Alfred J. Guetling, Elene Holmes, Donald Kent, Bill K. Monroe, Ryan Polstra, Robert Proaps, Mina May Robbins, Elmer Sanders, Del Wilson and Gloyd Zeller (Charging Parties) of the dismissals of their separate charges that allege that the Los Rios College Federation of Teachers, CFT/AFT (Federation) violated the Educational Employment Relations Act (EERA) section 3544.9,¹ as enforced under section

¹EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3544.9 states:

The employee organization recognized or certified as the exclusive representative for the purpose of meeting and negotiating shall

3543.6(b)² by excluding them from eligibility for a 20 year longevity, 4 percent salary bonus step, when the Federation negotiated the current collective bargaining agreement with the Los Rios Community College District (District).

The Charging Parties urge consolidation of their 17 separate charges in this single appeal. Because the allegations in the charges are identical, and the Charging Parties are similarly situated, the Board finds consolidation to be appropriate.³ (See Chaffey Joint Union High School District (1988) PERB Decision No. 669.) Accordingly, this decision constitutes the Board's resolution of each of the charges listed above.

We have reviewed the dismissals and, finding them to be free of prejudicial error, adopt the factual summaries and the analyses as the decision of the Board itself. However, in the interest of efficiency, the warning and dismissal letters issued in each case will not be attached hereto, but relevant portions of these are summarized below.

fairly represent each and every employee in the appropriate unit.

²EERA section 3543.6 states, in pertinent part:

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

³We note also that the warning and dismissal letters issued in each case were substantially identical.

FACTUAL SUMMARY

The Charging Parties are 17 regular part-time tenured instructors hired before November 8, 1967 (pre-67 instructors), by the District. The Federation is the exclusive bargaining representative for the certificated bargaining unit of which the Charging Parties are members. The Federation and the District are parties to a collective bargaining agreement effective from July 1, 1990 to June 30, 1993.

In 1977, as a result of the court's decision in Deglow v. The Board of Trustees (1977) 69 Cal.App.3d 459 [138 Cal.Rptr. 177], tenure status was granted to approximately 33 pre-67 instructors. The Charging Parties were included in this group of teachers. However, the District still maintained two separate salary structures, one for regular instructors and one for part-time evening and summer school instructors. Subsequently, in the 1980-81 academic year, the now tenured part-time instructors were placed on the regular instructors' salary schedule by the District.

In 1985, the District and the Federation added a "Step 20" to the regular salary schedule which provided a 4 percent longevity step bonus after 20 years of full-time, tenure-track service. The Charging Parties contend that the Federation's and District's 1985-86 position was to exclude the pre-67 instructors from eligibility for this bonus step.

Because 15 of the 17 pre-67 instructors objected to

their placement on the salary schedule by the District⁴, these instructors began "administrative type" proceedings to secure a correction of their placement on the salary schedule. In November 1989, one of the Charging Parties was notified by the Federation that it would not proceed on his behalf in this action, as it did not believe that a cause of action existed; the other Charging Parties were similarly notified by letter of the Federation's position in this regard on or about December 4, 1989.

On December 6, 1989, subsequent to a presentation made to the Sacramento County Board of Education on behalf of the pre-67 instructors which urged the Board to take action for proper salary placement, the Federation reversed its previous position on this matter. It indicated that it would file a grievance seeking proper salary placement on behalf of the pre-67 instructors. After negotiations in March 1990, the Federation and the District reached a settlement in this matter; each pre-67 instructor was placed on the maximum step of their salary classification and was awarded three years of back salary, plus interest.

On or about May 4, 1990, the District and the Federation completed negotiations on the 1990-1993 collective bargaining

⁴Two of the pre-67 instructors, Annette Deglow and Donald Kent, were not placed at step 1 on the salary schedule as were the other pre-67 instructors, but were placed on the maximum salary step. The charging parties state this discrepancy was, "primarily . . . a result of the Los Rios Teachers Association litigation."

agreement. The Federation then notified its members that negotiations had been completed with the District and that the contract would be submitted for ratification. On or about May 17, 1990, several of the Charging Parties notified the Federation by letter of their belief that the contract provision which excluded them from the step 20 bonus was discriminatory; they further demanded that the Federation take immediate action to correct this provision in the salary schedule of the 1990-93 contract. In a letter dated May 29, 1990, the Federation notified the Charging Parties that such a proposal would not be made in the current round of negotiations. On June 4, 1990, returned ballots were counted by the Federation and the 1990-1993 collective bargaining agreement was ratified by the unit members. Formal ratification by the District occurred on June 6, 1990.

On December 5, 1990, each of the 17 Charging Parties filed a charge alleging that the Federation, by the conduct discussed above, violated its duty of fair representation, enunciated in EERA section 3544.9. Subsequently, on or about January 11, 1991, Board agents issued warning letters on each charge. In response, timely amended charges were filed by each of the 17 Charging Parties. These amended charges added additional facts and background information. Nevertheless, all the charges were dismissed by the Board agents on or about February 1, 1991.

THE BOARD AGENTS' DISMISSALS

The Board agents dismissed the charges on the ground that Government Code section 3541.5(a)⁵ prohibits the issuance of a complaint based upon an unfair practice which occurred more than six months prior to the filing of the charge. Noting the general rule, enunciated in San Dieguito Union High School District (1982) PERB Decision No. 194, that the conduct complained of must either have occurred or have been discovered within the six-month period preceding the filing of the charge, the agents then stated, that with respect to duty of fair representation claims under section 3544.9, the limitation period begins to run on the date the employee, in the exercise of reasonable diligence, knew or should have known that further assistance from the union was unlikely. (International Union of Operating Engineers, Local 501 (Reich) (1986) PERB Decision No. 591-H.) The Board agents concluded that the Charging Parties should have known that Federation assistance was unlikely after the June 4, 1990, ratification by the Federation. Because the charges were filed on December 5, 1990, the Charging Parties would need to show that they did not have knowledge of the Federation's position prior

⁵Section 3541.5 states, in relevant part:

(a) Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not do either of the following:

(1) Issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge; . . .

to June 5, 1990, to render the charge timely. The Board agents concluded that failure by the Charging Parties to make this showing required dismissal of the charges.

Even assuming that the charges were timely filed, the Board agents further determined that the Charging Parties failed to establish a prima facie case that the Federation breached its duty of fair representation under section 3544.9. To establish a violation under that section, a party must show that the exclusive representative's conduct was arbitrary, discriminatory or in bad faith. (Rocklin Teachers Professional Association (Romero) (1980) PERB Decision No. 124 (Rocklin), pp. 6-8.) This standard applies to an exclusive representative's actions in contract negotiations. (Mount Diablo Education Association (DeFrates) (1984) PERB Decision No. 422; Redlands Teachers Association (Faeth and McCarty) (1978) PERB Decision No. 72.) The Board agents explained that arbitrary conduct under this standard requires a showing that the exclusive representative's conduct was without a rational basis, or was devoid of honest judgment. (Reed District Teachers Association. CTA/NEA (Reyes) (1983) PERB Decision No. 332, p. 9, citing Rocklin, p. 9, citing DeArroyo v. Sindicato de Trabajadores Packing (1st Cir. 1970) 425 F.2d 281 [74 LRRM 2028].) Because an exclusive representative is not obligated to bargain a particular item benefiting certain unit members (Sacramento City Teachers Association (Fanning, et al.) (1984) PERB Decision No. 428), and

because the Charging Parties failed to allege facts⁶ which showed arbitrary, discriminatory, or bad faith conduct by the Federation, a prima facie case had not been stated.

We agree with the analysis and conclusions expressed by the Board agents concerning these charges. Accordingly, the unfair practice charges in Cases No. S-CO-237 through S-CO-253 are hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Camilli and Carlyle joined in this Decision.

⁶The Board agents, in the warning letters, noted:

Your conclusion in your Statement of Charge that "... for the Union to negotiate a contract provision which again denies equal representation to a segment of its unit without rational and honest reason must be classed as 'arbitrary' and 'grossly negligent' representation which translates into a breach of the duty of fair representation ..." does not set forth 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.