

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



NORMAN P. BARTH,)
)
 Charging Party,) Case No. S-CO-255
)
 v.) PERB Decision No. 882
)
 LOS RIOS COLLEGE FEDERATION)
 OF TEACHERS, AFT/CIO,) May 24, 1991
)
 Respondent.)
 _____)

Appearances: Norman P. Barth, on his own behalf; Law Offices of Robert J. Bezemek by Anne B. Weills, Attorney, for Los Rios College Federation of Teachers, AFT/CIO.

Before Hesse, Chairperson; Shank and Camilli, Members.

DECISION

SHANK, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Norman P. Barth (Barth) of a regional attorney's dismissal (attached hereto) of his unfair practice charge. In his charge, Barth alleged that the Los Rios College Federation of Teachers (Federation) violated section 3543.6(b) of the Educational Employment Relations Act (EERA),¹ by discriminating against employees when it based the

¹EERA is codified at Government Code section 3540 et seq. All statutory references herein are to the Government Code. 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.

amount of organizational security fees on a percentage of a bargaining unit member's salary and section 3544.9² of EERA, by not fairly representing each and every employee in the unit in establishing the fee. The regional attorney correctly concluded that the charge did not state a prima facie case as to either alleged violation. However, his conclusion that the Federation did not breach its duty to fairly represent the bargaining unit members is not sufficiently supported in the warning letter.

In order to state a prima facie violation of the duty of fair representation, a charging party must show that the exclusive representative's conduct was arbitrary, discriminatory, or in bad faith (United Teachers of Los Angeles (Collins) (1982) PERB Decision No. 258). There must, at a minimum, be an assertion of sufficient facts from which it becomes apparent how or in what manner the exclusive representative's action was without a rational basis or devoid of honest judgment (Reed District Teachers Association, CTA/NEA (Reyes) (1983) PERB Decision No. 332). The present charge does not include sufficient facts from which it can be determined how the Federation's action was without rational basis or devoid of honest judgment or was discriminatory or in bad faith.

²EERA section 3544.9 states as follows:

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.

Accordingly, the regional attorney correctly concluded that the charge fails to allege sufficient facts to establish a prima facie case of a violation of EERA section 3544.9.

We have reviewed the regional attorney's dismissal in light of the above discussion, Barth's appeal, and the entire record in this matter and adopt that dismissal as the decision of the Board itself.³

ORDER

The unfair practice charge in Case No. S-CO-255 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairperson Hesse and Member Camilli joined in this Decision.

³The correct citation to the Hudson case, cited by the regional attorney in his warning letter, is Chicago Teachers Union v. Hudson (1986) 475 U.S. 292.

PUBLIC EMPLOYMENT RELATIONS BOARD



Headquarters Office
1031 18th Street
Sacramento, CA 95814-4174
(916) 322-3088



February 25, 1991

Norman P. Barth

Re: Norman P. Barth v. Los Rios College Federation of Teachers.
AFL-CIO
Unfair Practice Charge No. S-CO-255
DISMISSAL LETTER

Dear Mr. Barth:

On December 13, 1990, you filed the above-referenced charge against Los Rios College Federation of Teachers (Federation) alleging a violation of Government Code 3543.6(b). Specifically you allege that the Federation has discriminated against employees and failed to properly represent employees because the Federation has tied the amount of organizational security fee to salary level.

I indicated to you in my attached letter dated February 14, 1991, 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 that 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 25, 1991, the charge would be dismissed.

I have not received either a request for withdrawal or an amended charge. However, I did receive your letter of February 16, 1991, stating that you chose not to file an amended charge. I am therefore dismissing the charge based on the facts and reasons contained in my February 14, 1991, 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 Code of Regulations, 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 (California

Administrative Code, title 8, 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 (California Code of Regulations, title 8, 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 California Code of Regulations, title 8, 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 (California Code of Regulations, title 8, 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 W. SPITTLER
General Counsel

By _____
Bernard McMonigle
Regional Attorney

Attachment

PUBLIC EMPLOYMENT RELATIONS BOARD



Headquarters Office
1031 18th Street
Sacramento, CA 95814-4174
322-3088



February 14, 1991

Norman P. Barth

Re: Norman P. Barth v. Los Rios College Federation of Teachers,
AFL-CIO
Unfair Practice Charge No. S-CO-255
WARNING LETTER

Dear Mr. Barth:

On December 13, 1990, you filed the above-referenced charge against Los Rios College Federation of Teachers (Federation) alleging a violation of Government Code 3543.6(b). Specifically you allege that the Federation has discriminated against employees and failed to properly represent employees because the Federation has tied the amount of organizational security fee to salary level.

My investigation reveals that the Federation currently charges dues to members based on a sliding scale which relates the amount of dues to salary level. Nonmembers are charged seventy-five percent of the amount of dues charged to members. Accordingly, nonmembers charges are also based on a sliding scale related to salary.

To establish a discrimination violation, it must shown that the employee participated in protected activity, and that the adverse action was motivated by the employee participation in protected activity. (Novato Unified School District (1982) PERB Decision No. 210) You have set forth no facts which establish that the Federation is charging organizational security fees in a discriminatory manner based on employee participation in protected activities. Accordingly, you have not shown that the union has discriminated against the employees.

You contend that "the organizational security fee must be paid by nonmembers on no other basis than an equal division of the cost of representation." You appear to base this position in part on Hudson v. Chicago Teachers (1986) 475 U.S. 292. The Hudson case dealt with the constitutional requirements for an employee organization's collection of agency fees. Those requirements include an adequate explanation for the basis of the fee, an opportunity to challenge the amount, and escrow of amounts reasonably in dispute while the challenge is pending. The case

makes clear that an objector may not be charged for purposes unrelated to collective bargaining. However, in ~~Hudson~~ the Supreme Court did not determine that all nonmembers must be charged the same agency fee.¹

Recently the California Supreme Court held that the Educational Employment Relations Act gives nonmembers the right to refuse to pay to support union activities which are beyond the scope of its obligation as the exclusive representative. (Cumero v. Public Employment Relations Board (1989) 49 CA3d 575). As the Cumero court made clear a nonmember has a right to be assured that a service fee is collected and spent only on the employee organization's representational obligations. Once this has been accomplished, a union has met its duty. There appears to be no existing mandate, in either statutes or case law, that a union must charge the same amount of service fee to all individuals represented.

For these reasons, the charge as presently written does not state a prima facie case. If there are any factual inaccuracies in this letter or any additional facts that would correct the deficiencies explained above, please amend the charge accordingly. The amended charge should be prepared on a standard PERB unfair practice charge form clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and must 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 February 25, 1991, I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198.

Sincerely,

Bernard McMonigle
Regional Attorney

BMC:djt

¹ In Hudson, the union charged nonmember teachers \$16.40 a month and "other covered employees" \$11.54 per month.