

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LINNELL VIOLETT,

Charging Party,

v.

LOS RIOS COLLEGE FEDERATION OF
TEACHERS, CFT/AFT,

Respondent.

Case No. S-CO-226

PERB Decision No. 889

June 19, 1991

CRAIG LEHMAN,

Charging Party,

v.

LOS RIOS COLLEGE FEDERATION OF
TEACHERS, CFT/AFT,

Respondent.

Case No. S-CO-227

DEBRA BIGGS,

Charging Party,

v.

LOS RIOS COLLEGE FEDERATION OF
TEACHERS, CFT/AFT,

Respondent.

Case No. S-CO-228

LORRAINE CHOW,

Charging Party,

v.

LOS RIOS COLLEGE FEDERATION OF
TEACHERS, CFT/AFT,

Respondent.

Case No. S-CO-229

DORLENE CLAYTON,)
)
 Charging Party,) Case No. S-CO-230
)

v.)
)

LOS RIOS COLLEGE FEDERATION OF)
)
 TEACHERS, CFT/AFT,)
)
 Respondent.)
)

EUNICE GRAVES,)
)
 Charging Party,) Case No. S-CO-231
)

v.)
)

LOS RIOS COLLEGE FEDERATION OF)
)
 TEACHERS, CFT/AFT,)
)
 Respondent.)
)

CARRIE HART,)
)
 Charging Party,) Case No. S-CO-232
)

v.)
)

LOS RIOS COLLEGE FEDERATION OF)
)
 TEACHERS, CFT/AFT,)
)
 Respondent.)
)

CARMEN PADILLA,)
)
 Charging Party,) Case No. S-CO-233
)

v.)
)

LOS RIOS COLLEGE FEDERATION OF)
)
 TEACHERS, CFT/AFT,)
)
 Respondent.)
)

JUANITA RIPPETOE,)	
)	
Charging Party,)	Case No. S-CO-234
)	
v.)	
)	
LOS RIOS COLLEGE FEDERATION OF)	
TEACHERS , CFT/AFT,)	
)	
Respondent.)	
_____)	
)	
CAROLYN SMITH,)	
)	
Charging Party,)	Case No. S-CO-235
)	
v.)	
)	
LOS RIOS COLLEGE FEDERATION OF)	
TEACHERS, CFT/AFT,)	
)	
Respondent.)	
_____)	
)	
KIYOKO WILLIAMS,)	
)	
Charging Party,)	Case No. S-CO-236
)	
v.)	
)	
LOS RIOS COLLEGE FEDERATION OF)	
TEACHERS, CFT/AFT,)	
)	
Respondent.)	
_____)	

Appearances: Linnell Violet, Craig Lehman, Debra Biggs, Lorraine Chow, Dorlene Clayton, Eunice Graves, Carrie Hart, Carmen Padilla, Juanita Rippetoe, Carolyn Smith and Kiyoko Williams, 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

CARLYLE, Member: This case comes before the Public Employment Relations Board (Board) on appeal by Linnell Violet, Craig Lehman, Debra Biggs, Lorraine Chow, Dorlene Clayton, Eunice

Graves, Carrie Hart, Carmen Padilla, Juanita Rippetoe, Carolyn Smith and Kiyoko Williams (Charging Parties) of the dismissals of their separate charges alleging 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 3543.6(b)² by excluding them from eligibility for a 20 year longevity, four percent salary bonus step, when the Federation negotiated the current collective bargaining agreement with the Los Rios Community College District (District).

The allegations in the unfair practice charges are identical, and the Charging Parties are similarly situated. Therefore, the Board finds consolidation of the 11 separate

¹**EERA** 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 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.

charges into a single appeal 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, affirm the factual summaries and the analyses. 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.

FACTUAL SUMMARY

The Charging Parties are 11 instructors of the District's Children's Center. 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 1985, the District and the Federation added a "Step 20" to the regular salary schedule which provided a four 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 these instructors from eligibility for this bonus step.

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

On or about May 4, 1990,⁴ the District and the Federation completed negotiations on the 1990-93 collective bargaining agreement. Thereafter, the Federation notified its members that negotiations with the District had been completed and that the contract would be submitted for ratification. On or about May 17, 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, the Federation notified the Charging Parties that such a proposal would not be made in the current round of negotiations. On June 4, ratification ballots were returned to and counted by the Federation concerning the bargaining unit's consent to the 1990-93 collective bargaining agreement. Ratification was approved by the unit members. Formal ratification by the District occurred on June 6, and the collective bargaining agreement became effective July 1.

On December 5, each of the 11 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 Charging Parties. These amended charges added additional facts and

⁴Unless otherwise indicated, all dates refer to 1990.

background information. Nevertheless, all the charges were dismissed by the Board agents on or about February 21, 1991.

BOARD AGENTS' DISMISSALS

The Board agents properly dismissed the charges on the ground that EERA 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. The general rule, enunciated in San Dieguito Union High School District (1982) PERB Decision No. 194, provides that the conduct complained of must either have occurred or been discovered within the six-month period preceding the filing of the charge. The Board agents 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 ratification by the Federation. Because the charges were filed on December 5,

⁵EERA section 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; . . .

the Charging Parties would need to show that they did not have knowledge of the Federation's position prior to June 5, 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 properly 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].)

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

ORDER

The unfair practice charges in Cases Nos. S-CO-226 through S-CO-236 are hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairperson Hesse and Member Camilli 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.