

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



PROFESSIONAL SCHOOL BUS DRIVERS)
ASSOCIATION,)
)
Charging Party,) Case No. LA-CO-557
)
v.) PERB Decision No. 923
)
CALIFORNIA SCHOOL EMPLOYEES) February 19, 1992
ASSOCIATION, CHAPTER 724,)
)
Respondent.)
_____)

Appearances: Vicki L. Gilbreath, Attorney, for Professional School Bus Drivers Association; William C. Heath, Attorney, for California School Employees Association, Chapter 724.

Before Shank, Camilli and Carlyle, Members.

DECISION

CARLYLE, Member: This case is before the Public Employment Relations Board (Board) on appeal by the Professional School Bus Drivers Association (PSBDA) of a Board agent's dismissal, attached hereto, of its charge that the California School Employees Association, Chapter 724 (CSEA), violated section 3544.9 of the Educational Employment Relations Act (EERA).¹ We have reviewed the dismissal, and, finding it to be free of prejudicial error, adopt it as the decision of the Board itself.

¹EERA is codified at Government Code section 3540 et seq. EERA 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.

DISCUSSION

In its appeal, PSBDA contends that CSEA had a duty to represent its employees (or to provide justification for refusing to do so) when PSBDA demanded, in its March 11, 1991 letter, that CSEA authorize PSBDA's retained counsel to continue "settlement negotiations" with the San Diego Unified School District (District), concerning the appropriate sum to be paid as back wages and benefits in accord with a court order.² PSBDA claims that CSEA's silence in the face of such request constitutes a breach of the duty of fair representation. However, the negotiations to which PSBDA refers are a matter of compliance in a lawsuit between PSBDA and the District. The lawsuit is outside the scope of representation, and CSEA, therefore, owes no duty with regard to the lawsuit in general, nor, particularly, the compliance portion thereof. (Berkeley Federation of Teachers. Local 1078. AFL-CIO (Moore! (1988) PERB Decision No. 658, p. 6; California School Employees Association (Lohmann) (1991) PERB Decision No. 898, p. 2.))

In addition, PSBDA claims that its withdrawal of the requested remedy of reimbursement of past attorneys' fees incurred in its lawsuit against the District renders irrelevant the Board agent's findings that: (1) the six-month time period within which to file a charge had expired; and (2) CSEA owed no duty to participate in the lawsuit. As stated above, because the

²PSBDA retained private counsel to bring a lawsuit against the District to enforce a portion of the California Education Code.

lawsuit is outside of the scope of representation, CSEA owed no duty with regard thereto.

PSBDA further claims that CSEA's unsuccessful attempt to intervene in the lawsuit constitutes discrimination against PSBDA's members, as CSEA was "accepting some issues for some members and ignoring other issues for charging parties." As CSEA owed no duty to PSBDA or the employees in question, the facts alleged fail to constitute a prima facie case of a breach of the duty of fair representation. Furthermore, CSEA's conduct was not arbitrary, discriminatory or in bad faith.

ORDER

The unfair practice charge in Case No. LA-CO-557 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Shank and Camilli joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Boulevard, Suite 650
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(213) 736-3127



July 23, 1991

Vicki L. Gilbreath, Esq.
2445 Fifth Avenue, Suite 350
San Diego, California 92101

Re: DISMISSAL AND REFUSAL TO ISSUE COMPLAINT, Unfair
Practice Charge No. LA-CO-557, Professional School Bus
Drivers Association v. California School Employees
Association

Dear Ms. Gilbreath:

I indicated to you in my attached letter dated July 5, 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 July 12, 1991, the charge would be dismissed.

On July 12, 1991, I received from you an amended charge. The amended charge withdraws any claim against CSEA for reimbursement of attorney's fees and costs. The amended charge alleges as follows, however, with respect to the letter of March 11, 1991, that demanded that CSEA reimburse such fees and costs and commit to paying them in the future:

Although not expressly stated in the letter to CSEA, the clear and implied alternative was for CSEA to fulfill its duty under Government Code § 3543.3 to meet and negotiate with the DISTRICT concerning recovery to CHARGING PARTIES of their back wages and benefits, matters within the scope of CSEA's exclusive representation.

It is alleged that CSEA did not respond to this aspect of the letter. It is also alleged that CSEA has filed a motion to intervene in PSBDA's lawsuit in order to assure a nondiscriminatory seniority system, but CSEA has not undertaken to represent PSBDA members.

The charge as amended still does not state a prima facie violation of the EERA. CSEA's alleged failure to respond to the alleged "implied alternative" demand, which admittedly was not "expressly stated," does not show arbitrary, discriminatory or

Dismissal and Refusal to
Issue Complaint
LA-CO-557
July 23, 1991
Page 2

bad faith conduct on the part of CSEA. Similarly, it is not apparent how CSEA's limited participation in PSBDA's lawsuit represents arbitrary, discriminatory, or bad faith conduct. In any case, for the reasons stated in my July 5 letter, CSEA's duty of fair representation does not extend to the lawsuit. I am therefore dismissing the charge based on the facts and reasons contained in this letter and in my July 5 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

Dismissal and Refusal to
Issue Complaint
LA-CO-557
July 23, 1991
Page 3

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
Thomas J. **Allen**
Regional Attorney

Attachment

cc: William C. Heath, Deputy Chief Counsel
CSEA, San Jose

PUBLIC EMPLOYMENT RELATIONS BOARD



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July 5, 1991

Vicki L. Gilbreath, Esq.
2445 Fifth Avenue, Suite 350
San Diego, CA 92101

RE: WARNING LETTER, Unfair Practice Charge No. LA-CO-557,
Professional School Bus Drivers Association v. California
School Employees Association

Dear Ms. Gilbreath:

In the above referenced charge, the Professional School Bus Drivers Association (PSBDA) alleges that the California School Employees Association (CSEA) refused to represent PSBDA members, in alleged violation of Government Code section 3544.9 of the Educational Employment Relations Act (EERA).

My investigation of this charge reveals the following facts.

CSEA is the exclusive representative of a unit of some of the classified employees of the San Diego Unified School District (District). The District did not recognize hourly bus drivers as classified employees or as members of the unit. In 1988, CSEA rejected the request of hourly bus drivers for representation. Ninety-two hourly bus drivers then associated themselves as PSBDA and retained private counsel to bring a lawsuit against the District under the Education Code for recognition as classified employees. On November 13, 1990, PSBDA's lawsuit successfully resulted in an order against the District.

On March 11, 1991, PSBDA demanded that CSEA reimburse PSBDA for its past attorney's fees and costs and commit to paying the fees and costs necessary to conclude the litigation. CSEA refused the demand.

PSBDA filed its unfair practice charge against CSEA on May 13, 1991.

Based on the facts stated above, the charge does not state a prima facie violation of the EERA within the jurisdiction of the Public Employment Relations Board (PERB), for the reasons that follow.

Government Code section 3541.5(a) forbids PERB to "issue a complaint in respect of any charge based upon an alleged unfair

Warning Letter
LA-CO-557
July 5, 1991
Page 2

practice occurring more than six months prior to the filing of the charge." In cases involving an alleged violation of the duty of fair representation, the six-month limitation generally begins to run when the employee or employees knew or should have known that further assistance from the exclusive representative was unlikely. International Union of Operating Engineers, Local 501 (1986) PERB Decision No. 591-H, at p. 4. It appears from the allegations that this occurred in 1988 (when CSEA allegedly rejected the employees' request for representation), over two years before the charge was filed. The later success of PSBDA in obtaining a court order (exactly six months before the charge was filed) does not cause the limitations period to run again. Id. at pp. 5-6. Nor is there any apparent reason why CSEA's refusal in 1991 to pay for the representation it refused to provide in 1988 should cause the limitations period to run again.

Furthermore, the duty of fair representation does not extend to the enforcement of rights under the Education Code. San Francisco Classroom Teachers Association, CTA/NEA (1985) PERB Decision No. 544. The duty of fair representation normally extends to the negotiation process and the grievance and arbitration procedure, where the exclusive representative possesses the exclusive means by which employees may obtain a particular remedy. Id. It is evident that CSEA did not possess the exclusive means to litigate the employees' rights under the Education Code.

Finally, even if the duty of fair representation did apply, it is not apparent how CSEA violated that duty. In order to state a prima facie violation of that duty, a Charging Party must show that the exclusive representative's conduct was arbitrary, discriminatory, or in bad faith. In United Teachers of Los Angeles (Collins), id., PERB stated:

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

In order to state a prima facie case of arbitrary conduct violating the duty of fair representation, a Charging Party:

. . . must, at a minimum, include an assertion of sufficient 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. Reed District Teachers Association, CTA/NEA (Reyes) (1983) PERB

Warning Letter
LA-CO-557
July 5, 1991
Page 3

Decision No. 332, citing Rocklin Teachers Professional Association (Romero) (1980) PERB Decision No. 124.

PSBDA has not provided sufficient facts from which it is apparent how either CSEA's refusal to represent hourly bus drivers (which the District did not recognize as classified employees or unit members) or CSEA's refusal to pay PSBDA's legal expenses was without a rational basis, devoid of honest judgment, discriminatory or in bad faith.

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 July 12, 1991, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3127.

Sincerely,

Thomas J. Allen
Regional Attorney