

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



TIMOTHY GALE SIMERAL,)
)
 Charging Party,) Case No. S-CO-278
)
 v.) PERB Decision No. 930
)
 CALIFORNIA SCHOOL EMPLOYEES) May 14, 1992
 ASSOCIATION,)
)
 Respondent.)
 _____)

Appearances: Timothy Gale Simeral, on his own behalf; William C. Heath, Attorney, for California School Employees Association.

Before Hesse, Chairperson; Caffrey and Carlyle, Members.

DECISION AND ORDER

HESSE, Chairperson: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Timothy Gale Simeral of a PERB Board agent's dismissal (attached hereto) of his charge alleging that the California School Employees Association violated section 3543.6(b) of the Educational Employment Relations Act (EERA)¹ by mishandling a grievance

¹EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, 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.

regarding the timing of a bus run.

The Board has reviewed the Board agent's warning and dismissal letters, and finding them to be free of prejudicial error, adopt them as the decision of the Board itself.

The unfair practice charge in Case No. S-CO-278 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Caffrey and Carlyle joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



February 24, 1992

Timothy Gale Simeral

Re: Timothy Gale Simeral v. California School Employees
Association
Unfair Practice Charge No. S-CO-278
DISMISSAL LETTER

Dear Mr. Simeral:

On January 24, 1992, you filed a charge which appears to allege that the California School Employees Association (CSEA), violated its duty of fair representation guaranteed by Government Code section 3544.9 (EERA) and thereby violated EERA section 3543.6(b). Specifically, you alleged that CSEA violated its duty of fair representation by mishandling a grievance you filed regarding the timing of your bus run.

I indicated to you in my attached letter dated February 21, 1992, 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 28, 1992, the charge would be dismissed.

On February 24, 1992, you telephoned me to discuss my letter of February 21, 1992. During our conversation you informed me that you did not agree with my conclusion that CSEA did not violate its duty of fair representation. We also discussed your options of amending your charge or appealing my dismissal to the Board, if you decided not to amend your charge. Following our discussion you stated that you would not amend the charge and requested that I issue a dismissal letter to allow you the opportunity to file an appeal with the Board. I am therefore dismissing the charge based on the facts and reasons contained in my February 21, 1992 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 Regs., tit. 8, sec. 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 Code of Regs., tit. 8, sec. 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 Regs., tit. 8, sec. 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 Regs., tit. 8, sec. 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 Regs., tit. 8, sec. 32132).

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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

Michael E. Gash
Regional Attorney

cc: Forrest D. Fauchier
Field Director
California School Employees Association
2501 West Shaw Avenue, Suite 107
Fresno, CA 93711

Attachment

MEG:er

PUBLIC EMPLOYMENT RELATIONS BOARD



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



February 21, 1992

Timothy Gale Simeral

Re: Timothy Gale Simeral v. California School Employees
Association
Unfair Practice Charge No. S-CO-278
WARNING LETTER

Dear Mr. Simeral:

On January 24, 1992, you filed a charge which appears to allege that the California School Employees **Association (CSEA)**, violated its duty of fair representation guaranteed **by Government Code** section 3544.9 (EERA) and thereby violated EERA section 3543.6(b). Specifically, you allege that CSEA **violated its duty of fair representation** by mishandling a grievance you filed regarding the timing of your bus run. My investigation revealed the following information.

In early December, 1989, you applied for the Jerseydale Bus Drivers position which was advertised at 6.75 hours per day. On or about February 5, 1990, you received a letter from Administrative Assistant, Becky Rauch informing you that the advertisement for the Jerseydale Run had been changed to a Triangle/Junior High Run and a Mariposa Pines Run. From about December, 1989 until April, 1990 you complained to CSEA Representative, John Moseley and Director of Transportation, Joe Babcock about the time it was taking to fill the position. In April, 1990 you received the Triangle/Junior High Run which was advertised for 5.5 hours per day. After working the Triangle/Junior High Run for about two weeks you informed Bill Loucks that it was taking more time than 5.5 hours to complete the bus route.

On September 4 1990, you wrote to Moseley and informed him that you were starting a new school year and working well over the 5.5 hours per day on your bus route. You also asked for assistance to received payment for the hours you have worked over 5.5 hours per day. On or about September 24, 1990, you wrote Director

Babcock about your bus route and informed him it was taking longer than the time advertised for the route.

On October 12, 1990, you had a meeting with Moseley, Babcock, Barbara Parker and Bill Loucks about the time of your bus route. It was decided at the end of this meeting that an independent driver would do the run. On or about November 1, 1990, Dean Fogh arrived at the Bus Garage to ride with you during your bus route. You called Moseley and told him about Fogh and Moseley told you to let him ride along.

In December, 1990, you were informed by CSEA Chapter 609 President, John Stelling that the Executive Committee wanted to meet with you. On or about February 7, 1991, you received a letter from Superintendent Sam B. Hill informing you that there was insufficient evidence to support your proposal to increase the time allocated to the bus route from 5.50 to 6.25 hours. He also informed you that the consensus of opinion was that the route could be regularly driven in 5.75 hours and that you would be paid for the extra .25 hours from the first date you started driving the bus route in April 1990. You were subsequently paid for the extra .25 hours from the date you first started driving the bus route. On February 19, 1991 you wrote a letter to Moseley regarding your bus route and Moseley responded to your letter on February 27, 1991.

On May 10, 1991 and June 26, 1991 you met with Babcock regarding his refusal to approve the extra time you worked on your bus route. On or about July 10, 1991, you filed a grievance regarding this matter. On or about July 22, 1991, your grievance was denied.

On July 30, 1991, a bus run to determine the length of time necessary to drive a school bus over your route was held. Chris Corea conducted the run and determined five hours and forty-five minutes as the total time to drive the bus routes.

On or about August 13, 1991, Moseley sent a letter to Superintendent Hill, which informed him that based on Corea's letter your bus route would be 5.75 hours and your grievance regarding that run would be closed.

Based on the allegations set forth above, I find that you have failed to state a prima facie violation that CSEA violated its duty of fair representation guaranteed by EERA section 3544.9 and thereby violated EERA section 3543.6(b).

Charging Party has alleged that CSEA, the exclusive representative denied Charging Party the right to fair representation guaranteed by EERA section 3544.9 and thereby violated section EERA 3543.6(b). The duty of fair representation imposed on the exclusive representative extends to grievance handling. Fremont Teachers Association (King) (1980) PERB Decision No. 125; United Teachers of Los Angeles (Collins) (1983) PERB Decision No. 258. In order to state a prima facie violation of this section of the EERA, Charging Party must show that the Association's conduct was arbitrary, discriminatory, or in bad faith. In United Teachers of Los Angeles (Collins), Id., the Public Employment Relations Board (PERB) stated:

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

.

A union may exercise its discretion to determine how far to pursue a grievance on the employee's behalf as long as it does not arbitrarily ignore a meritorious grievance or process a grievance in a perfunctory fashion. A union is also not required to process an employee's grievance if the chances for success are minimal.

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

Your charge as currently written fails to assert 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. Therefore, your

charge fails to state a prima facie violation of the duty of fair representation.

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 28, 1992, I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198.

Sincerely,

Michael E. Gash
Regional Attorney