



STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

LENA IGGERS MOSZKOWSKI,)	
)	
Charging Party,)	Case No. LA-CO-583
)	
v.)	PERB Decision No. 946
)	
UNITED TEACHERS-LOS ANGELES,)	June 30, 1992
)	
Respondent.)	

Appearance: Lena Iggers Moszkowski, on her own behalf.
Before Hesse, Chairperson; Caffrey and Carlyle, Members.

DECISION AND ORDER

CARLYLE, Member: This case is before the Public Employment Relations Board (Board) on appeal by Lena Iggers Moszkowski of a Board agent's dismissal (attached hereto) of her charge alleging that the United Teachers-Los Angeles violated section 3543.6(b) of the Educational Employment Relations Act (EERA)¹ by failing to represent her in her grievances against the Los Angeles Unified School District.

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.

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

The unfair practice charge in Case No. LA-CO-583 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairperson Hesse and Member Caffrey joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Boulevard, Suite 650
Los Angeles, CA 90010-2334
(213) 736-3127



March 16, 1992

Lena Iggers Moszkowski

Re: DISMISSAL AND REFUSAL TO ISSUE COMPLAINT, Unfair Practice
Charge No. LA-CO-583, Lena Iggers Moszkowski v. United
Teachers - Los Angeles

Dear Ms. Moszkowski:

I indicated to you in my attached letter dated March 2, 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 March 10, 1992, the charge would be dismissed.

On March 8, 1992, you filed an amended charge by certified mail. The amended charge does not, however, contain significant additional facts not already contained in your original charge. The amended charge emphasizes your allegations that UTLA Area Representative Tavlin was "inadequately informed," did not "competently" present your case at the Step I meeting, and "failed to ensure" a Step II meeting (which apparently was not scheduled because the District was short of staff). At most, however, these allegations would suggest negligence on Tavlin's part, which would not constitute a breach of UTLA's duty.

The amended charge also emphasizes your allegation that in Tavlin's letter of August 1, 1991, she told you "absolute lies." The alleged "lies" concerned Tavlin's understanding of your willingness to consider retirement from the District. Tavlin's letter, however, was addressed to you alone. If it incorrectly represented your willingness to retire, you had the opportunity to correct Tavlin's expressed understanding. Tavlin said she would not sign any document for you, and she did not do so. It therefore is still not apparent how Tavlin or UTLA acted in bad faith.

The amended charge does not state a prima facie violation of the EERA. I am therefore dismissing the charge based on the facts and reasons contained in this letter and in my March 2 letter.

Dismissal and Refusal
to Issue Complaint
LA-CO-583
March 16, 1992
Page 2

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).

Dismissal and Refusal
to Issue Complaint
LA-CO-583
March 16, 1992
Page 3

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: Roger Segure

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Boulevard, Suite 650
Los Angeles, CA 90010-2334
(213) 736-3127



March 2, 1992

Lena Iggers Moszkowski

Re: WARNING LETTER, Unfair Practice Charge
No. LA-CO-583, Lena Iggers Moszkowski v.
United Teachers - Los Angeles

Dear Ms. Moszkowski:

In the above-referenced charge, you allege that United Teachers - Los Angeles (UTLA) denied you the right to fair representation guaranteed by Government Code section 3544.9 of the Educational Employment Relations Act (EERA), in alleged violation of Government Code section 3543.6(b) of the EERA.

My investigation of the charge reveals the following facts.

You have been employed by the Los Angeles Unified School District (District) in a bargaining unit for which UTLA is the exclusive representative. From December 1990 through March 1991, you requested that UTLA Area Representative Jeanni Tavlin file several grievances on your behalf, but Tavlin refused to do so. On February 25, 1991, you requested that Tavlin represent you at a "disciplinary conference" to discuss two classroom observations, but Tavlin refused to represent you or to furnish another UTLA representative. On March 6, 1991, Tavlin told you to revise a letter to your principal that you had drafted in your own defense, or else she would not represent you.

On May 7, 1991, Tavlin represented you at a meeting with your principal. Tavlin told you not to speak in your own defense. At the meeting, your principal gave you a Notice of Unsatisfactory Act and a Below Standard Performance Evaluation. On May 20, 1991, Tavlin filed two grievances on your behalf. At the Step I grievance meeting on June 13, 1991, Tavlin told you not to speak and not to present your own written defenses or defense exhibits.

In May and June of 1991, Tavlin repeatedly tried to persuade you to accept a settlement with the District that would include your retirement. On July 23, 1991, the District offered such a settlement to Tavlin in writing. On July 31, 1991, you informed Tavlin by fax that the offer was unacceptable to you and that she should not sign any agreements or papers for you. Tavlin responded with a letter acknowledging your fax and stating, "I

Warning Letter
LA-CO-583
March 2, 1992
Page 2

will not, as you requested in your fax to me today, sign any document for you."

On August 1, 1991, UTLA Secretary and Grievance Review Committee Chair Jim V. Weber sent you a letter concerning your two grievances, stating in part as follows:

Upon careful review of the contract language and all the available material related to your case, UTLA has decided not to proceed in the above matter. However, you have the right to appeal this decision to the Grievance Review Committee of UTLA.

On September 19, 1991, you appeared before the UTLA Grievance Review Committee, which insisted that you talk only about the substance of your grievances. On October 9, 1991, the Committee informed you by letter of its decision not to arbitrate the matter and to close the case. On October 14, 1991, the Committee further informed you that "[a]ll avenues under the LAUSD-UTLA Collective Bargaining Agreement have been exhausted" and that "[y]our only course of action now is in civil court."

Meanwhile, at some point in time you went on Industrial Leave from the District. On August 19, 1991, you informed UTLA Secretary Weber that you were "very distressed" that you had not received a placement for the 1991-92 school year, which began on August 16, 1991. You asked that UTLA "take immediate action to correct this wrong." UTLA did not respond to this request, but on September 3, 1991, the District informed you that you were assigned to Marina Del Rey Junior High School as of September 10, 1990, and that this would remain your assignment until you returned from leave, so long as you returned by February 27, 1992.

You filed your charge on December 2, 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)(1) states that PERB "shall not . . . 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." UTLA's alleged failures and refusals to represent you prior to June 2, 1991, are therefore outside PERB's jurisdiction.

You have alleged that UTLA, as the exclusive representative, denied you the right to fair representation guaranteed by EERA section 3544.9 and thereby violated EERA section 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, 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., 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.

It is not apparent how UTLA's conduct, including its decision not to arbitrate your grievances, was without a rational basis, devoid of honest judgment, discriminatory, or in bad faith. Your charge asserts that UTLA discriminated against you based on your

Warning Letter
LA-CO-583
March 2, 1992
Page 4

age, but there are no alleged facts that demonstrate that your age played an inappropriate role in UTLA's conduct.

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 March 10, 1992, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3127.

Sincerely,

Thomas J. Allen
Regional Attorney