

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ANNETTE M. DEGLOW,)
)
Charging Party,) Case No. S-CO-297
)
v.) PERB Decision No. 992
)
LOS RIOS COLLEGE FEDERATION OF) April 27, 1993
TEACHERS, LOCAL 2279, CFT/AFT,)
AFL-CIO,)
)
Respondent.)
_____)

Appearance: Annette M. Deglow, on her own behalf.

Before Blair, Chair; Hesse and Caffrey, Members.

DECISION AND ORDER

CAFFREY, Member: This case is before the Public Employment Relations Board (Board) on appeal by Annette M. Deglow (Deglow) of a Board agent's dismissal (attached hereto) of her unfair practice charge. In the charge, Deglow alleged that the Los Rios College Federation of Teachers, Local 2279, CFT/AFT, AFL-CIO violated section 3543.6(b) of the Educational Employment Relations Act (EERA)¹ by violating its duty of fair representation.

¹EERA is codified at Government Code section 3540 et seq. 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 warning and dismissal letters, the original and amended charge, Deglow's appeal and the entire record in this case. The Board finds the Board agent's dismissal to be free of prejudicial error and adopts it as the decision of the Board itself.

The unfair practice charge in Case No. S-CO-297 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chair Blair and Member Hesse joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916) 322-3198



December 31, 1992

Annette Deglow

Re: Annette Deglow v. Los Rios College Federation of Teachers
Unfair Practice Charge No. S-CO-297

DISMISSAL LETTER

Dear Ms. Deglow:

On October 5, 1992 you filed the above-referenced charge alleging a violation of the duty of fair representation by the Los Rios College Federation of Teachers (Federation).

I indicated to you, in my attached letter dated November 30, 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 which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to December 7, 1992, the charge would be dismissed. At your request, that deadline was extended.

On December 28, 1992, you filed an amended charge. In that amended charge, you continue to allege that the Los Rios College Federation of Teachers violated its duty of fair representation because of remarks made by the Federation's president to the Sacramento County School Board. Your amended charge contains a great deal more background information regarding the issue of longevity pay and your relationship with the Federation. You also included several new arguments which had not been made in the prior charge. However, no new facts are presented in your amended charge which would affect either the reasoning or the conclusion which I reached in my letter of November 30, 1992.¹

¹It is true that under the Educational Employment Relations Act the County Board of Education may be deemed an employer. However, the Sacramento County Board of Education has no collective bargaining relationship with the Los Rios College Federation of Teachers which includes you as a member of the bargaining unit. Accordingly, the Federation's appearance before the Sacramento County Board of Education was unconnected with negotiating or administering a collective bargaining agreement.

Accordingly, for the reasons given in that letter, your charge must be dismissed.

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. (Cal. 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 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. (Cal. 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 (20) calendar days following the date of service of the appeal. (Cal. 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 Cal. 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 (3) 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. (Cal. Code of Regs., tit. 8, sec. 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,

ROBERT THOMPSON
Deputy General Counsel

By Michael Hask for
Bernard McMonigle
Regional Attorney

Attachment

cc: Michael Crowley, President
Los Rios College Federation of Teachers
1225 8th Street, Suite 465
Sacramento, CA 95814

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916)322-3198



November 30, 1992

Annette Deglow

Re: Annette Deglow v. Los Rios College Federation of Teachers
Unfair Practice Charge No. S-CO-297

WARNING LETTER

Dear Ms. Deglow:

On October 5, 1992, you filed the above-referenced charge alleging a violation of the duty of fair representation by the Los Rios College Federation of Teachers (Federation). On this date, I attempted to reach you by telephone to discuss the charge. You were not in and I left a message.

Your charge reveals the following. You are employed by the Los Rios Community College District. On December 3, 1991, you ". . . as resource person for the 17 Pre-67 instructors, addressed the Sacramento County School Board with reference to our concerns for full recognition of benefits based on our being employed with the Los Rios District prior to November 8, 1967. . . ." You asked the County Board to support an investigation by the Sacramento County Grand Jury and Attorney General's office into the withholding of said benefits. Your issue was placed on the agenda for the April 21, 1992 meeting of the County Board. At that meeting, you restated your request to have Board support for an investigation by the Sacramento Grand Jury and the Attorney General's office for your dispute with the District over benefits. The next speaker was Mike Crowley, President of the Federation. Crowley indicated that he would not address the issue of sick leave as that was an issue between yourself and the District. Crowley did address the issue of a four percent longevity bonus. Crowley indicated that you were

active in a competing organization which challenges the Federation on a variety of issues. Crowley stated:

. . . I think it is important that you understand on the issue itself it is like this every tenured faculty person in the Los Rios District is entitled to the 20 year longevity bonus when they have served the full equivalent of 20 years. This means that a great number of full-time faculty do not get the bonus in 20 years. Suddenly we discover that Mrs. Deglow is taking this case to PERB and claiming that we have been unfair to her organization because we didn't bargain for that particular item and that's all I have to say.

You allege that through his presentation to the County Board and because he was not informed and disclaimed any responsibility with regard to the sick leave issue, Crowley violated the duty of fair representation. According to your charge, Crowley also denied knowledge of how the collective bargaining agreement between the Federation and the District relates to the four percent bonus. During the meeting of the County Board, Board Member Joe Buonaiuto at one time stated ". . . this is a sad incident of labor forgetting their interest and forgetting who, and what side of the table they are supposed to be on." At the meeting, the Board's attorney, Terry Filliman, indicated that the 17 Pre-67 instructors had their status improperly stated by the District and that a complicated issue was how to make the 17 Pre-67 instructors whole again. You contend that Crowley's presentation did not offer to help make these instructors whole for their losses. In sum, you contend that ". . . labor's presence at this meeting was without the intent to serve the interest of the 17 unit members was devoid of honest judgment "

To set forth the elements of a violation of the duty of fair representation, the Charging Party must demonstrate that a labor organization's conduct is arbitrary, discriminatory, or in bad faith towards a union member concerning a matter arising out of the collective bargaining relationship. (Rocklin Professional Association (1980) PERB Decision No. 124. The duty of fair representation does not extend to aspects of the employment relationship beyond collective bargaining areas where the labor organization has an exclusive right to act San Francisco Classroom Teachers Association, CTA/NEA (Chestangue) (1985) PERB

Letter to Annette Deglow
UPC No. S-CO-297
Page 3

Decision No. 544. In California State Employees Association (Parisi) (1989) PERB Decision No. 733-S, the Board stated,

The duty of fair representation evolved out of the exclusive representative's duty to represent each and every unit member, regardless of membership status, in actions that arise out of the obligations of collective bargaining, specifically negotiation and administration of a collective bargaining agreement.

In that case, the Board determined that PERB's jurisdiction is limited to an examination of the Union's role as exclusive representative. The duty of fair representation does not extend to a forum that has no connection with collective bargaining, i.e., where an employee has the right to appear and/or concerns an individual right unconnected with negotiating or administering a collective bargaining agreement. "There is no duty of fair representation owed to a unit member unless the exclusive representative possesses the exclusive means by which such employee can obtain a particular remedy. . . ." California State Employees' Association (Darzins). (1985) PERB Decision No. 546-S.

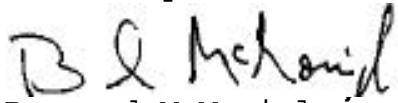
In this case, the forum in which you and the Federation appeared was an entity which is not your employer nor part of the employment relationship between yourself and the Los Rios Community College District. Requesting that the Sacramento County Board of Education support your position before the Sacramento County Grand Jury and the District Attorney's office is not a matter arising out of the collective bargaining relationship. The Union does not possess the exclusive means by which you can obtain a favorable response by the Board. Accordingly, your charge must be dismissed.

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 additional facts which would correct the deficiencies explained above, please amend the charge. 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 be signed under penalty of perjury by the charging party. The amended charge must be served on the respondent and the original

Letter to Annette Deglow
UPC No. S-CO-297
Page 4

proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before December 7, 1992, I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198.

Sincerely,

A handwritten signature in cursive script that reads "B. McMonigle".

Bernard McMonigle
Regional Attorney