

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



BETTY JEAN GIBSON,)
)
 Charging Party,) Case No. S-CO-313
)
 v.) PERB Decision No. 1054
)
 AMALGAMATED TRANSIT UNION LOCAL) September 6, 1994
 256,)
)
 Respondent.)
 _____)

Appearance: Betty Jean Gibson, on her own behalf.
Before Blair, Chair; Carlyle and Johnson, Members.

DECISION

JOHNSON, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Betty Jean Gibson (Gibson) of a Board agent's dismissal (attached) of the unfair practice charge against the Amalgamated Transit Union Local 256 (ATU). Gibson's charge alleged that ATU violated her right to fair representation guaranteed under section 3544.9 of the Educational Employment Relations Act (EERA) thereby violating EERA section 3543.6(b).¹ The Board has reviewed the warning and

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.

Section 3543.6(b) states, in pertinent part:

It shall be unlawful for an employee organization to:

dismissal letters, Gibson's appeal and the entire record in this case. The Board finds the Board's agent's dismissal to be free of prejudicial error and adopts it as the decision of the Board itself in accordance with the following discussion.

DISCUSSION

On appeal, Gibson requested the Board to determine the merits of her charge against ATU. Gibson alleges that ATU failed to process her grievance within the time period allowed for in the collective bargaining agreement. Gibson claims that even though she was repeatedly reassured by ATU over a period of one year, that they were attending to her grievance, they ultimately stated that they missed the filing deadline. In addition, Gibson argues that because of ATU's actions or inactions, she has suffered a monetary loss.

To establish a prima facie case of a violation of the duty of fair representation Gibson must demonstrate that ATU's conduct was arbitrary, discriminatory or in bad faith. (United Teachers of Los Angeles (Collins) (1982) PERB Decision No. 258 (Collins)). The question here is whether ATU's "action or inaction" was without a rational basis when ATU failed to file a grievance on Gibson's behalf. (Reed District Teachers Association, CTA/NEA (Reyes) (1983) PERB Decision No. 332.)

(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.

In analyzing whether ATU's alleged failure to file a grievance on behalf of Gibson constitutes a prima facie case, all essential facts alleged in the charge and the supplemental pleading are assumed to be true. (San Juan Unified School District (1977) EERB Decision No. 12.²)

Is ATU's "action or inaction" tantamount to processing a grievance in a perfunctory manner and thus a violation of the duty of fair representation? The Board agent's warning letter stated that in August, 1992, Gibson returned from a medical leave and called attention to ATU's inaccurate calculation of her seniority. The Board agent's warning letter also states that in August, 1993, one year after Gibson returned from medical leave, Roy Williams, ATU president, advised her that he was "told [by the District] that there was nothing that could be done." It was too late to file a grievance. Thus, the reason Gibson filed this charge.

In accordance with Collins, a union cannot accept a grievance and then proceed to process that grievance in a perfunctory fashion. In the instant case, ATU's handling of Gibson's grievance falls slightly short of a perfunctory process because Gibson alleged no facts that showed that ATU's conduct in failing to pursue her grievance was anything more than mere negligence. The Board in the past has found that mere negligence

²Prior to January 1, 1978, PERB was known as Educational Employment Relations Board.

on the part of a party does not constitute arbitrary, discriminatory or bad faith conduct. (Reed District Teachers Association, CTA/NEA (Reyes) (1983) PERB Decision No. 332, p. 9, citing Rocklin Teachers Professional Association (Romero) (1980) PERB Decision No. 124.)

The Board hereby AFFIRMS the Board agent's dismissal of Gibson's unfair practice charge.

ORDER

The unfair practice charge in Case No. SF-CO-313 is DISMISSED WITHOUT LEAVE TO AMEND.

Chair Blair and Member Carlyle joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



May 3, 1994

Betty Jean Gibson

Judy Boatwright

Re: Betty Jean Gibson v. Amalgamated Transit Union Local 256
Unfair Practice Charge No. S-CO-313

DISMISSAL LETTER

Dear Mrs. Gibson:

On January 10, 1994, you filed a charge in which you allege that the Amalgamated Transit Union, Local 256 (ATU) violated section 3543.6 of the Government Code. Specifically you allege that the ATU did not adequately represent you when you wished to contest the calculation of your seniority points by your employer, the Elk Grove Unified School District (District). You contend that in August, 1992, upon your return from a medical leave of absence, you called to the attention of ATU the inaccurate calculation of your seniority by the District. ATU President, Roy Williams, along with other ATU officers advised you they would look into it and attempt to resolve the problem. A year passed in which you continued to inquire as to the status of your complaint, you were continually told it was being attended to by ATU representatives.

In August, 1993, Roy Williams advised you that he had been told by the District that there was nothing that could be done. It was too late to file a grievance and Roy Williams advised you he should have filed one to protect your interests.

Since you filed the charge, there have been further attempts to resolve the question of your seniority. ATU did have the District reevaluate your seniority and the four months that were deducted from your seniority were restored. You continued to want PERB to determine the merits of your charge.

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

I indicated to you in my attached letter dated April 15, 1994 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 May 2, 1994, the charge would be dismissed.

I have not received either an amended charge or a request for withdrawal. Therefore, I am dismissing the charge based on the facts and reasons contained in my April 15, 1994, 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. (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 _____
Roger Smith
Board Agent

Attachment

cc: Joseph Freitas, Jr.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



April 15, 1994

Betty Jean Gibson

Re: Betty Jean Gibson v. Amalgamated Transit Union Local 256
Unfair Practice Charge No. S-CO-313

WARNING LETTER

Dear Mrs. Gibson:

On January 10, 1994, you filed a charge in which you allege that the Amalgamated Transit Union, Local 256 (ATU) violated section 3543.6 of the Government Code. Specifically you allege that the ATU did not adequately represent you when you wished to contest the calculation of your seniority points by your employer, the Elk Grove Unified School District (District). You contend that in August, 1992, upon your return from a medical leave of absence, you called to the attention of ATU the inaccurate calculation of your seniority by the District. ATU President, Roy Williams, along with other ATU officers advised you they would look into it and attempt to resolve the problem. A year passed in which you continued to inquire as to the status of your complaint, you were continually told it was being attended to by ATU representatives.

In August, 1993, Roy Williams advised you that he had been told by the District that there was nothing that could be done. It was too late to file a grievance and Roy Williams advised you he should have filed one to protect your interests.

Since you filed the charge, there have been further attempts to resolve the question of your seniority. ATU did have the District reevaluate your seniority and the four months that were deducted from your seniority were restored. You continued to want PERB to determine the merits of your charge.

You have alleged that the exclusive representative denied you the right to fair representation guaranteed by EERA section 3544.9 and thereby violated 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 EERA, Charging Party must show that the Association's conduct was arbitrary, discriminatory or in bad faith. In United Teachers of Los Angeles (Collins). the Public Employment Relations Board stated:

April 15, 1994
Page 2

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. [Citations.]

A union may exercise its discretion to determine how far to pursue a grievance in 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. (Emphasis added.)" [Reed District Teachers Association. CTA/NEA (Reyes) (1983) PERB Decision No. 332, p. 9, citing Rocklin Teachers Professional Association (Romero) (1980) PERB Decision No. 124.]

ATU's inaction in filing a grievance may demonstrate negligence but negligence alone does not demonstrate a violation of the duty to fairly represent you.

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 proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before May 2, 1994, I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198 ext.358.

Sincerely,

()
Roger Smith
Board Agent

cc: Judy Boatwright