

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ANNETTE M. DEGLOW,)
)
 Charging Party,) Case No. S-CO-349
)
 v.) PERB Decision No. 1135
)
 LOS RIOS COLLEGE FEDERATION OF)
 TEACHERS, CFT/AFT LOCAL 2279,) January. 29, 1996
)
 Respondent.)
 _____)

Appearances; Annette Deglow, on her own behalf; Law Offices of Robert J. Bezemek by Adam H. Birnhak, Attorney, for Los Rios College Federation of Teachers, CFT/AFT Local 2279.

Before Garcia, Johnson and Dyer, Members.

DECISION AND ORDER

GARCIA, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Annette Deglow (Deglow) to a Board agent's dismissal (attached) of her unfair practice charge. Deglow filed an unfair practice charge alleging that the Los Rios College Federation of Teachers, CFT/AFT Local 2279 (Federation) breached the duty of fair representation mandated by section 3544.9 of the Educational Employment Relations Act (EERA), thereby violating EERA section 3543.6(b),¹

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

EERA section 3543.6 states, in pertinent part:

when it took certain actions related to grievances filed by her. After investigation, the Board agent dismissed the charge for failure to establish a prima facie case of a violation of EERA.

The Board has reviewed the entire record in this case, including the original and amended unfair practice charge, the warning and dismissal letters, Deglow's appeal, and the Federation's response. The Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself.

The unfair practice charge in Case No. SF-CO-349 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Johnson and Dyer joined in this Decision.

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.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



November 9, 1995

Annette M. Deglow

Re: Annette M. Deglow v. Los Rios College Federation of
Teachers. CFT/AFT Local 2279
Unfair Practice Charge No. S-CO-349
DISMISSAL LETTER

Dear Ms. Deglow:

On May 26, 1995 you filed the above-referenced charge alleging violations of Government Code sections 3543, 3543.6(a) and (b) and 3544.9. Specifically, you allege that the Los Rios College Federation of Teachers (LRCFT or Union) handled a grievance of yours in a discriminatory fashion.

I indicated to you, in my attached letter dated October 5, 1995, 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 October 12, 1995, the charge would be dismissed. I granted you an extension of time until October 31st.

I received your amended charge on October 25, 1995. In the amended charge you again assert that the Federation violated its duty of fair representation toward you. You supply more information in the form of factual background. You explain how you sustained injuries in the 1980s to your vocal chords and gastrointestinal system which required accommodations within the workplace. Some of these disability accommodations were subsequently challenged by co-workers in the mathematics department.

You also supplied information as to why you believed the evaluation dated 4/19/94 which you received was improper. You contend that you were in fact teaching your course consistent with the college catalogue description, that your written response to one of the evaluators (rather than a conversation) was proper and that the allegation that you had ordered transparencies and failed to pay the vendor was untrue.

In your amended charge, you again allege that it was improper for the LRCFT to decide that, because the district had re-evaluated you and, agreed that the original evaluation would not be used in any disciplinary process, there was no longer a grievable situation. You again allege that it was improper for the Federation to inform the district of this determination on January 9th, prior to the scheduled January 30, 1995 deadline for you to appeal the Union's decision not to pursue the grievance further. You allege that "disclosure of the Federation position was premature and compromised the efforts to bring full resolve to the issues being grieved," and that you continued to be adversely effected by the derogatory comments made in the original evaluation. You contend that such disclosure was "arbitrary, discriminatory and in bad faith," and as such, evidences the LRCFT's violation of its duty of fair representation.

You also allege a violation of the duty of fair representation because of the Union's discriminatory actions toward you. As evidence of discrimination you state that the Union refused to seek a board of review for your grievance but did seek a board of review for a probationary instructor who did not receive a pay increase. You also point to the fact that the Federation described your grievance in an article in the Union news despite the fact that it has a stated practice to hold the active grievance issues confidential unless the grievant gave permission. You attached the articles which the Union has published regarding unfair practice charges which you have brought against them.

As stated in my letter of August 5, 1995, a union's decision not to take a grievance to arbitration is not a violation of the duty of fair representation where a rational basis for the decision exists. (Castro Valley Unified School District (1980) PERB Dec. No. 149.) In this case it appears to be a rational determination for the Union to conclude that you would no longer be adversely effected by the initial evaluation. Nor does it appear irrational to so inform the employer. Such a decision by the Union is not made less credible by the fact that the Union has taken another case, based on different facts, to arbitration. Nor does the LRCFT publication of its position regarding unfair practice charges filed against it support a finding that you were deprived of fair representation in this grievance. Accordingly, this 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:

Attention: Appeals Assistant
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.)

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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,

ROBERT THOMPSON
Deputy General Counsel

Bernard McMonigle
Regional Attorney

Attachment

cc: Adam Birnhak

PUBLIC EMPLOYMENT RELATIONS BOARD

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

October 5, 1995

Annette M. Deglow

Re: Annette Deglow v. Los Rios College Federation of
Teachers/CFT/AFT/Local 2279
Unfair Practice Charge No. S-CO-349
WARNING LETTER

Dear Ms. Deglow:

On May 26, 1995 you filed the above-referenced charge alleging violations of Government Code sections 3543, 3543.6(a) and (b) and 3544.9. Specifically, you allege that the Los Rios College Federation of Teachers (LRCFT or Union) handled a grievance of yours in a discriminatory fashion.

Your charge indicates that on January 3, 1995 the LRCFT Executive Director Robert Perrone sent a letter to you with respect to a pending grievance that you had filed against the Los Rios Community College District. In that letter, Perrone stated that your deadline for requesting that the Union pursue a hearing before a board of review would be January 30, 1995 and that you should contact his office before that date if you had any new evidence to support taking the grievance to that level. You then state that in a letter dated January 9, 1995, Perrone sent a letter to the college director of personnel services stating in part, ". . . it is the position of the LRCFT that, as a result of the remedy offered by the District, there is no longer a grievable situation." You contend that in this manner, the LRCFT advised the district of its position prior to your January 30, 1995 deadline. You believe that this action was grossly negligent and an intentional act of retaliation because you to filed unfair labor practice charges with PERB.

Further investigation reveals the following. On or about May 26, 1994, you filed a grievance over an evaluation of your teaching. In part, that evaluation stated that "per your estimate, 33% of the required course material was not covered in Math 52 during the fall 1993 term," and that "the committee suggests that you strive to establish more open communication with your colleagues and work through channels to resolve issues." The evaluation was also somewhat critical of a recent order of transparencies

charged to the college but issued to your home address without proper authorization.

Your grievance was processed by the LRCFT up to and including the chancellor level response (the step just prior to board of review). In the chancellor's level response, the college took the position that there had been a follow-up classroom visit to your classroom and that your performance was rated as "overall meets standards." The college also indicated that this standard rating precluded the initial needs improvement rating for the spring 1994 evaluation from being used in a disciplinary process. The district took the position that it did not believe that there was any need to destroy the original evaluation.

After evaluating the district's response the LRCFT, by letter of January 3, 1995, told you that because of the district's statement that the original evaluation would not be used in any disciplinary process, and the fact that the Union did not "think of any manner in which the district might use the evaluation against you," the Union had taken the position that the district's remedy no longer meant that you had been adversely effected by violation of any provision of the collective bargaining agreement. The Union did leave open the possibility for you to contact them with further information by January 30th. At your request, the Union sent a letter to the director of personnel services on January 9, 1995 requesting information which you believed was necessary in order to attach your own explanation to the evaluation that you had received. In that letter the Union stated that "it is the position of the LRCFT that, as a result of the remedy offered by the district, there is no longer a grievable situation."

A breach of the duty of fair representation occurs when the union's conduct toward a member of the bargaining unit is "arbitrary, discriminatory or in bad faith." (Rocklin Teachers Professional Association (1980) PERB Dec. No. 124.) An employee must show sufficient facts indicating 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 (1983) PERB Decision No. 332.) In grievance processing, a union's decision not to take a grievance to arbitration is not a violation where a rational basis for the decision exists. (Castro Valley Unified School District (1980) PERB Decision No. 149.)

In this case, the LRCFT represented you in the grievance process and received a reply from the college that you were now rated as "meets standards" and that the initial needs improvement rating would not be used in any disciplinary process. Accordingly, it appears rational for the Union to take the position that there was no longer a grievable situation and that you were no longer adversely affected by the initial rating. Because you have not demonstrated how the LRCFT action is without a rational basis or devoid of honest judgment, this 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 proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before October 12, 1995, I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198, extension 355.

Sincerely,

\
Bernard McMonigle
Regional Attorney

BMC:mmh