

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



FRANCELLE VERCHER,)
)
 Charging Party,) Case No. LA-CO-722
)
 v.) PERB Decision No. 1196
)
 SERVICE EMPLOYEES INTERNATIONAL) May 2, 1997
 UNION, LOCAL 99,)
)
 Respondent.)
 _____)

Appearance: Francelle Vercher, on his own behalf.

Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION AND ORDER

CAFFREY, Chairman: This case is before the Public Employment Relations Board (Board) on appeal by Francelle Vercher (Vercher) of a Board agent's dismissal (attached) of his unfair practice charge. In the charge, Vercher alleged that the Service Employees International Union, Local 99 violated section 3543.6(b) and (c) of the Educational Employment Relations Act (EERA).¹

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.

(c) Refuse or fail to meet and negotiate in good faith with a public school employer of any of the employees of which it is the exclusive representative.

The Board has reviewed the entire record in this case including the unfair practice charge, the Board agent's warning and dismissal letters² and Vercher's appeal. The Board finds the warning and dismissal letters to be free of prejudicial error and hereby adopts them as the decision of the Board itself.

The unfair practice charge in Case No. LA-CO-722 is DISMISSED WITHOUT LEAVE TO AMEND.

Members Johnson and Dyer joined in this Decision.

²The January 14, 1997, warning letter cites Oxnard School District (Gorcey/Tripp) (1988) PERB Decision No. 667. The correct citation is Oxnard Educators Association (Gorcey and Tripp) (1988) PERB Decision No. 664 which holds that an individual employee does not have standing to allege that an employee organization failed to negotiate in good faith with the employer.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



January 22, 1997

Francelle Vercher

Re: Vercher v. Service Employees International Union. Local 99
Unfair Practice Charge No. LA-CO-722
DISMISSAL AND REFUSAL TO ISSUE A COMPLAINT

Dear Mr. Vercher:

In the above-referenced charge you allege the Service Employees International Union, Local 99 (SEIU) violated the Educational Employment Relations Act (EERA or Act) section 3543.6(b) and (c).

I indicated to you, in my attached letter dated January 14, 1997 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 January 21, 1997, 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 January 14, 1997 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

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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

Tammy L. Samsel
Regional Director

Attachment

cc: Howard Z. Rosen

PUBLIC EMPLOYMENT RELATIONS BOARD



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



January 14, 1997

Francelle Vercher

Re: Vercher v. Service Employees International Union. Local 99
Unfair Practice Charge No. LA-CO-722
WARNING LETTER

Dear Mr. Vercher:

In the above-referenced charge you allege the Service Employees International Union, Local 99 (SEIU) violated the Educational Employment Relations Act (EERA or Act) section 3543.6(b) and (c).

The charge states in its entirety:

Failure to negotiate in good faith. This contract states raises are due and negotiable from year to year. The Local 99 stated, per Mr. Andre Hayes that the union was not going to allow the Los Angeles Unified School District to keep the state give cost of living adjustment some sixty seven million dollars, this was lost. A three percent new money for the new contract. In September 96 cease and desist was put into effect by Local 99 on the UTLA union. Failure to represent in a hearing. This happened to myself in July 95 in May 96 it happened to another co-worker named Manual, in Sept. 96 Edward Dudley was not represented. Failure to receive a cost of living as per contract, [sic]

On January 13, 1997 I spoke with you regarding this charge. I indicated the charge as presently written did not state a prima facie violation of the EERA. I explained individual employees did not have standing to allege violations of EERA section 3543.6(c). I told you that you did have standing to allege the union violated its duty of fair representation, but that I would need more information regarding that allegation. However, you indicated the union's failure to represent you in the hearing was outside the statute of limitations period. Rather than withdrawing this charge, you requested a letter explaining my analysis of your charge.

This charge fails to state a prima facie violation for the reasons stated below.

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An individual employee does not have standing to allege an employee organization failed to negotiate in good faith with an employer. (See Oxnard School District (Gorcey/Tripp), (1988) PERB Decision No. 667.) To the extent that this charge alleges SEIU failed to negotiate in good faith with the Los Angeles Unified School District it must be dismissed.

You do have standing to allege SEIU violated its duty of fair representation. However this charge fails to factually demonstrate a prima facie violation within the jurisdiction of PERB. EERA § 3541.5(a)(1) provides the Public Employment Relations Board 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." It is your burden, as the charging party to demonstrate the charge has been timely filed. (See Tehachapi Unified School District (1993) PERB Decision No. 1024.)

Your charge alleges, and you confirmed during our telephone conversation on January 13, 1997, that the hearing in which SEIU failed to represent you was held in July of 1995. Your charge was filed on December 6, 1996. The appropriate statute of limitations period only dates back to July 6, 1996. Thus this allegation is untimely filed.

The right to fair representation is guaranteed by EERA section 3544.9. 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) (1982) 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:

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.]

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

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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.]

The charge does not provide facts demonstrating SEIU violated its 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 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 January 21, 1997, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3008.

Sincerely,

Tammy L. Samsel
Regional Director