

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



WILLIAM JOHN REILLY,)	
)	
Charging Party,)	Case No. LA-CO-751
)	
v.)	PERB Decision No. 1276
)	
UNITED TEACHERS LOS ANGELES,)	July 23, 1998
)	
Respondent.)	

Appearances: William John Reilly, on his own behalf; Geffner & Bush by Nathan Kowalski, Attorney, for United Teachers Los Angeles.

Before Johnson, Dyer and Amador, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (Board) on appeal of a Board agent's dismissal (attached) of William John Reilly's (Reilly) unfair practice charge. Reilly's charge alleged that the United Teachers Los Angeles (UTLA) breached the duty of fair representation mandated by section 3544.9 of the Educational Employment Relations Act (EERA) and thereby violated EERA section 3543.6(b)¹

¹EERA is codified at Government Code section 3540 et seq, EERA section 3544.9 provides:

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 provides, in relevant part:

It shall be unlawful for an employee organization to:

when it closed one of Reilly's grievances without his permission.

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

ORDER

The unfair practice charge in Case No. LA-CO-751 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Johnson and Amador joined in this Decision.

(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



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



May 22, 1998

William John Reilly

Re: William John Reilly v. United Teachers Los Angeles
Unfair Practice charge No. LA-CO-751
DISMISSAL AND REFUSAL TO ISSUE COMPLAINT

Dear Mr. Reilly:

In this charge filed October 14, 1997, you allege that United Teachers Los Angeles (UTLA) closed one of your grievance cases against your will in violation of Government Code section 3543.6 of the Educational Employment Relations Act (EERA).

I indicated to you, in my attached letter dated May 14, 1998, 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 21, 1998, the charge would be dismissed.

You called me on May 19, 1998 and we discussed, in part, your options as described at the end of my letter dated May 14, 1998. As you did not have anything to add, you stated that you were not going to amend or withdraw the charge. I then advised you that I would issue a dismissal of your charge which includes information on your right to appeal. I have received nothing further as of this date, and therefore, I am dismissing the charge based on the facts and reasons contained above, and in my May 14, 1998 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

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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.)

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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

By MARC S. HURWITZ
Regional Attorney

Attachment (May 14, 1998 Letter)

cc: Nathan Kowalski, Esq. (Geffner & Bush)

PUBLIC EMPLOYMENT RELATIONS BOARD



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



May 14, 1998

William John Reilly

Re: William John Reilly v. United Teachers Los Angeles
Unfair Practice Charge No. LA-CO-751
WARNING LETTER

Dear Mr. Reilly:

In this charge filed October 14, 1997, you allege that United Teachers Los Angeles (UTLA) closed one of your grievance cases against your will in violation of Government Code section 3543.6 of the Educational Employment Relations Act (EERA).

My investigation revealed the following information. You were a teacher for the Los Angeles Unified School District for about eleven (11) years until your retirement in November 1997. As a teacher, you were a member of the bargaining unit exclusively represented by UTLA. Upon receiving a Notice of Unsatisfactory Service in June 1996 (referred to in your charge as a poor evaluation) from your former Principal at Virgil Middle School, you filed a grievance that same month. You were represented by UTLA which processed several grievances for you, including this one which is known as "Reilly #3 v. LAUSD".

By letter dated August 6, 1997 (sent cert. mail return receipt), UTLA's Grievance Review Committee advised you it decided not to proceed to arbitration in this matter. It also outlined the procedure for appealing this decision. By letter dated September 12, 1997 from Beverly Cook, Chair, Grievance Review Committee, to your address of record on Califa Street, you were advised about the August 6 letter and its contents. Ms. Cook indicated that the August 6 letter was returned by the Postal Service unclaimed and that delivery was attempted on August 7, 12 and 22. The September 12 letter concluded by indicating that UTLA had made a reasonable effort to contact you to inform you of the status of your case and would proceed no further in the matter; and that your Area Representative, Elsie Myers, was advised to close this grievance. In response to your inquiry to the union, Ms. Cook wrote you another letter on September 16, 1997 repeating information contained in the September 12 letter. You were advised, in part, that Ms. Myers closed this grievance.

Upon receiving the September 12 letter and learning that your case was closed, you called UTLA indicating that you did not want it closed, and you indicated that you had not received notice

from the Post Office of the August 6 certified letter. UTLA repeated that your case was closed. Next, you telephoned Day Higuchi, President of UTLA and advised him you wanted the grievance reopened. He indicated that you needed to contact PERB in Sacramento and file a grievance. You indicated, in part, that was unfair. He gave you PERB's Sacramento telephone number and hung up.

You do not believe UTLA made a reasonable effort to reach you in August 1997. For example, you believe that UTLA should have called you on the telephone in August 1997 and sent the August 6 letter regular and certified mail. You also allege, in part, that you and your Area Representative, Elsie Myers, did not see eye to eye. For example, you were in her office to discuss this grievance. She suggested that you should drop the grievance since you did not use the school's UTLA representative at a meeting with the Principal. You actually used your daughter who is a certified court reporter and takes perfect notes. Finally, your charge provides the following short review of the facts in outline form on page 5,

"The Principal who gave me a poor evaluation has been 'fired'.

I have had excellent evaluations in the past.

My Rep has let this case drag on for 14 months.

My rep is so vindictive (sic) I was told to drop the case.

I offered the Principal \$2,000.00 to take a polygraph and, if he passed, the money was his. He refused.

My Rep dropped my case because of the Postoffice (sic) mistakes.

My Rep wouldn't even telephone although they have my telephone number, my address in Woodland Hills, and I have a listed number.

UTLA President Higuchi told me to file a grievance with PERB when a simple word from him to my Rep would reopen my case.

I am asking PERB to please tell UTLA to reopen my case."

Based on the above facts, your charge fails to state a prima facie case. You are alleging that your 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) (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.]

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.]

In brief, you filed a grievance which was pursued to the point of arbitration. UTLA decided not to proceed to arbitration and attempted to notify you on August 6, 1997 by certified mail. You indicate you did not receive this letter or any notices from the Post Office. By the time you received the relevant information, the grievance was closed by UTLA. Although you alleged facts regarding several disagreements with UTLA, no facts demonstrate that the union acted in an arbitrary, discriminatory, or bad faith manner. UTLA followed its policy of sending notice to you by certified mail of its decision not to proceed to arbitration, and giving you your appeal rights. Even if you did not receive the August 6 letter, there are insufficient facts to show a

violation of the duty of fair representation. In addition, UTLA's failure to call you or send the letter by regular mail is not evidence of arbitrary, discriminatory, or bad faith 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 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 have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative¹ 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 21, 1998, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3543.

Sincerely,

Marc S. Hurwitz
Regional Attorney

¹UTLA's representative is Nathan Kowalski, Esq. of Geffner & Bush, Burbank, CA.