

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



DORIS J. WILLIAMS,)
)
 Charging Party,) Case No. LA-CO-669
)
 v.) PERB Decision No. 1277
)
 UNITED TEACHERS LOS ANGELES,) August 13, 1998
)
 Respondent.)
 _____)

Appearance: Doris J. Williams, on her own behalf.

Before Dyer, Amador and Jackson, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (Board) on appeal of a Board agent's dismissal (attached) of Doris J. Williams' (Williams) unfair practice charge. Williams' charge alleged that the United Teachers Los Angeles 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 when it refused to

¹EERA is codified at Government Code section 3540 et seq. EERA section 3543.6 provides, in relevant 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.

EERA section 3544.9 provides:

The employee organization recognized or

represent her in an employment dispute with the Los Angeles Unified School District.

The Board has reviewed the entire record in this case, including the unfair practice charge, the warning and dismissal letters and Williams' appeal. 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-669 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Amador and Jackson joined in this Decision.

certified as the exclusive representative for the purpose of meeting and negotiating shall fairly represent each and every employee in the appropriate unit.

~~PUBLIC EMPLOYMENT RELATIONS BOARD~~

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



May 20, 1998

Doris J. Williams

Re: Doris J. Williams v. United Teachers of Los Angeles
Unfair Practice Charge No. LA-CO-669
DISMISSAL LETTER

Dear Ms. Williams:

The above-referenced charge alleges that the United Teachers of Los Angeles (UTLA or Association) failed to properly represent you in your dispute with the Los Angeles Unified School District (District). This conduct is alleged to violate section 3544.9 of the Educational Employment Relations Act (EERA or Act).

I indicated to you, in my attached letter dated May 8, 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 18, 1998, 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 May 8, 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 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

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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

Attachment

cc: Roger Segure, UTLA

RGT:eke

PUBLIC EMPLOYMENT RELATIONS BOARD



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



May 8, 1998

Doris J. Williams

Re: Doris J. Williams v. United Teachers of Los Angeles
Unfair Practice Charge No. LA-CO-669

WARNING LETTER

Dear Ms. Williams:

The above-referenced charge alleges that the United Teachers of Los Angeles (UTLA or Association) failed to properly represent you in your dispute with the Los Angeles Unified School District (District). This conduct is alleged to violate section 3544.9 of the Educational Employment Relations Act (EERA or Act).

My investigation revealed the following information. You were a substitute teacher for the District at the Trinity Children's Center. On August 24, 1995, you became involved in a verbal altercation with a teacher's aide, Mrs. Debra Hudson Stovall, which was interrupted and terminated by Mrs. Josemie Jackson from the supervisor's office. On September 1, 1995, you received a certified letter from the District indicating that after careful evaluation of the conduct described in the inadequate service report, it was determined that you would be dismissed from your substitute status effective the date of the letter (August 31, 1995). You appealed this decision on September 11, 1995 and the District denied your appeal on September 23, 1995.

Rick Regberg, area representative, of the Association filed a grievance on September 6, 1995, concerning your inadequate service report which you had received on August 24, 1995. You informed Mr. Regberg that you had worked fewer than 100 days during the previous school year. The District, citing Article 1 section 1.1 of the collective bargaining agreement between the Association and the District (effective July 1, 1995 through June 30, 1998), refused to process the grievance. This section requires that "all day to day substitutes who were paid for fewer than 100 days during the preceding school year" are excluded from the bargaining unit that is exclusively represented by UTLA.

Based on the information contained above, this charge does not state a prima facie violation of the EERA for the reasons which follow.

Charging Party has alleged that the exclusive representative denied Charging Party 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.]

First, this charge does not state a prima facie case because you did not work a sufficient number of days to be considered a member of the bargaining unit exclusively represented the Association. Accordingly, the Association does not owe a duty of fair representation to you in your position as a day to day substitute.

Second, even if your position was in the bargaining unit represented by UTLA, the charge fails to show that the Association has acted in bad faith, discriminatorily or

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arbitrarily. Accordingly, no prima facie violation of the duty of fair representation has been presented.

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 representative 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 18, 1998, I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198, extension 361.

Sincerely,

ROBERT THOMPSON
Deputy General Counsel

RGT:eke