

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ANNETTE (BARUDONI) DEGLOW,)
)
 Charging Party,) Case No. SA-CO-426
)
 v.) PERB Decision No. 1351
)
 LOS RIOS COLLEGE FEDERATION OF) September 29, 1999
 TEACHERS/CFT/AFT/LOCAL 2279,)
)
 Respondent.)
 _____)

Appearance: Annette (Barudoni) Deglow, on her own behalf.
Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

AMADOR, Member: This case is before the Public Employment Relations Board (Board) on appeal by Annette (Barudoni) Deglow (Deglow) to a Board agent's partial dismissal (attached) of her unfair practice charge. As amended, the charge alleged that the Los Rios College Federation of Teachers/CFT/AFT/Local 2279 (Federation) breached its duty of fair representation in violation of section 3544.9 of the Educational Employment Relations Act (EERA).¹ The charge also alleged that the Federation interfered with her exercise of rights under EERA section 3543, thus violating EERA section 3543.6(b), when it

¹EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. 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.

refused to submit her grievance to arbitration. In addition, the charge alleges that the Federation caused or attempted to cause the District to violate EERA section 3543.6 (a).²

²EERA section 3543 states:

Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Public school employees shall also have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the public school employer, except that once the employees in an appropriate unit have selected an exclusive representative and it has been recognized pursuant to Section 3544.1 or certified pursuant to Section 3544.7, no employee in that unit may meet and negotiate with the public school employer.

Any employee may at any time present grievances to his employer, and have such grievances adjusted, without the intervention of the exclusive representative, as long as the adjustment is reached prior to arbitration pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8 and the adjustment is not inconsistent with the terms of a written agreement then in effect; provided that the public school employer shall not agree to a resolution of the grievance until the exclusive representative has received a copy of the grievance and the proposed resolution and has been given the opportunity to file a response.

EERA section 3543.6 states, in pertinent part:

It shall be unlawful for an employee organization to:

(a) Cause or attempt to cause a public school employer to violate Section 3543.5.

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

ORDER

The partial dismissal charge in Case No. SA-CO-426 is hereby AFFIRMED.

Chairman Caffrey and Member Dyer 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



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



June 23, 1999

Annette Deglow

Re: Annette Deglow v. Los Rios College Federation of
Teachers/CFT/AFT/Local 2279
Unfair Practice Charge No. SA-CO-426
PARTIAL DISMISSAL LETTER

Dear Ms. Deglow:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board on January 19, 1999. The charge alleges that the Los Rios College Federation of Teachers/CFT/AFT/Local 2279 (Federation) breached its duty of fair representation, as guaranteed by the Educational Employment Relations Act (EERA), Government Code section 3544.9, and thereby violated EERA section 3543.6(b), when it refused to submit Annette Deglow's grievance to arbitration. The charge also alleges that the Federation violated EERA section 3543.6(a) when it caused or attempted to cause the Los Rios Community College District (District) to violate the EERA. This letter addresses only the allegation that the Federation caused or attempted to cause the District to violate the EERA.

I indicated to you in my attached letter dated June 2, 1999, that certain allegations contained in the 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 these allegations to state a prima facie case or withdrew them prior to June 11, 1999, the allegations would be dismissed.

On June 10, 1999, you requested an extension of time to file an amended charge, which was granted to June 17, 1999. On June 15, 1999, you filed an amended charge.

The amended charge addresses the allegation that the Federation caused or attempted to cause the District to violate EERA. The charge alleges that by failing to represent you in your employment matters with the District, the Federation "aided and abetted" the District in its effort to violate and misapply contract provisions concerning discrimination, academic freedom and performance reviews. The charge contends that by its failure to provide assistance in your dealings with the District, the

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Federation encouraged the District to issue you a negative performance evaluation, violate your academic rights, terminate your voice accommodation program (VAP) and deny you access to District equipment and supplies necessary to develop a new VAP.

In essence, the charge asserts that the Federation breached its duty of fair representation in failing to represent you in the grievance and other matters and, thus, by failing to represent you the Federation caused or attempted to cause the District to violate your rights. You stated this is especially true since the Federation and the District agreed to contract language which prohibits you from being represented by outside counsel in your employment dealings with the District when the Federation refuses to represent you.¹ As such, you argue the Federation has an even greater obligation to step forward and take affirmative action to prevent the District from violating your rights.

In order to state a violation of EERA section 3543.6(a), it must be clear how and in what manner the Federation caused or attempted to cause the District to violate the EERA. (American Federation of State, County and Municipal Employees (Waters) (1988) PERB Decision No. 697-H; California School Employees Association (Kotch) (1992) PERB Decision No. 953.)

The charge does not provide facts which demonstrate how and in what manner the Federation caused or attempted to cause the District to discriminate or retaliate against you. You assert that the Federation's inaction in failing to represent you in matters before the District caused the District to violate your rights in various ways, including issuing you a negative performance evaluation, removing you from teaching Math 52, terminating your VAP and denying you access to District equipment necessary to develop a new VAP.

However, PERB case law, including those cases noted above, appear to indicate that a union must take affirmative actions in its attempt to cause an employer to violate the EERA. The facts alleged in the charge fail to demonstrate that the Federation affirmatively caused or attempted to cause the District to discriminate against you. Therefore, this allegation fails to state a prima facie case and must be dismissed.

¹Los Rios Community College District (Deglow) (1998) PERB Decision No. 1274; Los Rios College Federation of Teachers/CFT/AFT Local 2279 (Deglow) (1998) PERB Decision No. 1275.)

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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 Regs., tit. 8, sec. 32635 (a) .) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Cal. Code Regs., tit. 8, sec. 32135(a); see also Cal. Code Regs., tit. 8, sec. 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Cal. Code Regs., tit. 8, sec. 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, secs. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

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 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 Regs., tit. 8, sec. 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally

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delivered or deposited in the first-class mail, postage paid and properly addressed. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, sec. 32135(c) .)

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 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

Robin W. Wesley
Regional Attorney

Attachment

cc: Robert Perrone

PUBLIC EMPLOYMENT RELATIONS BOARD



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



June 2, 1999

Annette Deglow

Re: Annette Deglow v. Los Rios College Federation of
Teachers/CFT/AFT/Local 2279
Unfair Practice Charge No. SA-CO-426
PARTIAL WARNING LETTER

Dear Ms. Deglow:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board on January 19, 1999. The charge alleges that the Los Rios College Federation of Teachers/CFT/AFT/Local 2279 (Federation) breached its duty of fair representation, as guaranteed by the Educational Employment Relations Act (EERA), Government Code section 3544.9, and thereby violated EERA section 3543.6(b), when it refused to submit Annette Deglow's grievance to arbitration. The charge also alleges that the Federation violated EERA section 3543.6(a) when it caused or attempted to cause the Los Rios Community College District (District) to violate EERA.

Ms. Deglow is employed as a part-time tenured instructor for the District in the Mathematics Department of the Sacramento City College. Ms. Deglow has previously engaged in numerous activities deemed protected under EERA. For example, Ms. Deglow has previously filed unfair practice charges against the Federation, including a charge filed on October 28, 1997 in which a complaint was issued in March 1998 alleging interference with Ms. Deglow's rights. Ms. Deglow also served as president of a rival employee organization and participated in organizing activities. In January 1998, Ms. Deglow distributed a notice to bargaining unit members reminding them of the deadline for requesting an agency fee rebate from the Federation. These activities are well known to the Federation.

In the Fall 1991 semester, Ms. Deglow began teaching a course in Math 52 Elementary Geometry. The District approved a multimedia voice accommodation program which permitted Ms. Deglow to utilize 35mm slides, overhead transparencies and a voice amplification system in her classroom.

On December 15, 1994, Ms. Deglow received her faculty performance review in which she was marked satisfactory in every category and

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received an overall satisfactory rating. On December 18, 1997, Ms. Deglow was given her next faculty performance review. Ms. Deglow was marked unsatisfactory in seven categories and received an overall unsatisfactory rating. The performance report recommended that Ms. Deglow be removed from teaching the Math 52 course and reassigned to another math course for which she had no accommodation program.

Ms. Deglow filed several grievances challenging her performance review. On February 17, 1998, Ms. Deglow wrote to the Federation and requested that the union represent her in her grievances.

The Federation agreed to represent Ms. Deglow after she provided additional supporting documentation, agreed to consolidate her grievances into one and accepted the Federation's rewrite of the grievance. On April 23, 1998, the Federation filed a grievance on behalf of Ms. Deglow challenging her performance review.

The grievance filed by the Federation on behalf of Ms. Deglow charged that the District failed to provide explanations for the "needs improvement" ratings in five categories, the "needs improvement." ratings violated Ms. Deglow's academic freedom by criticizing her textbook, lecture style and order of subjects taught, and one "needs improvement" explanation demonstrated discrimination against Ms. Deglow for her political activities.

Similar grievances challenging performance reviews were filed by the Federation on behalf of two other instructors in the Mathematics Department. Earl Stephens' grievance was filed on January 22, 1997. This grievance challenged the review timelines and alleged that the review violated the grievant's academic freedom by criticizing his textbook, methods of instruction and his classroom presentation. Robert Plath's grievance was filed by the Federation on January 12, 1998. The grievance alleged a failure to explain the "needs improvement" ratings and violation of the grievant's academic freedom.

The Federation submitted the Stephens grievance to arbitration in January 1998. The arbitrator's decision was issued on May 26, 1998, finding no violation of the grievant's academic freedom.

The Federation summarized the arbitrator's decision in its August/September 1998 Union News. The article stated that claims that an evaluation violates academic freedom are difficult to support absent "clear and compelling evidence." The article defined necessary clear and compelling evidence in support of an academic freedom allegation as, "[s]tatements or written documentation from peer review team members that disparage the content of the course, the teaching methods, or the required

text, where the instructor chooses the text are a few examples."

At the September 9, 1998 meeting of the Federation's Executive Board, the Federation decided not to submit Ms. Deglow's grievance to arbitration. The Federation informed Ms. Deglow that it believed it would not prevail in arbitration.

Ms. Deglow appealed the Executive Board's decision and on September 23, 1998 the Federation Executive Board reaffirmed its earlier decision not to take Ms. Deglow's grievance to arbitration.

On or about October 21, 1998, the Federation decided to submit the Plath grievance arbitration.

Based upon the facts stated above, the allegation that the Federation caused or attempted to cause the District to violate the EERA fails to state a prima facie case.

EERA section 3543.6(a) makes it unlawful for an employee organization to:

Cause or attempt to cause a public school employer to violate Section 3543.5.

The charge alleges that the Federation caused or attempted to cause the District to violate EERA. However, the charge fails to provide any facts which demonstrate that the Federation took action to encourage or assist the District in discriminating or retaliating against Ms. Deglow. The charge explains that the District issued Ms. Deglow a negative performance review and the District rejected Ms. Deglow's grievance challenging the performance review. There are no facts, however, describing what action the Federation took in causing or attempting to cause the District to take these steps. Accordingly, this allegation fails to state a prima facie case and must be dismissed.

For these reasons the allegation that the Federation caused or attempted to cause the District to violate EERA, 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

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amended charge or withdrawal from you before June 11, 1999. I shall dismiss the above-described allegation from your charge. If you have any questions, please call me at (916) 327-8385.

Sincerely,

Robin W. Wesley
Regional Attorney