STATE OP CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

EMILY J. RUMRILL, ET AL.,	)	
Charging Parties,	)	Case No. LA-CO-814
v.	)	PERB Decision No. 1385
CORONA-NORCO TEACHERS ASSOCIATION, CTA/NEA,	)	May 11, 2000
Respondent.	)	

Appearances: Emily J. Rumrill, Representative, for Charging Parties; Reich, Adell, Crost & Cvitan by Marianne Reinhold, Attorney, for Corona-Norco Teachers Association, CTA/NEA.

Before Dyer, Amador and Baker, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (Board) on appeal by Emily J. Rumrill (Rumrill)[1] from the Board agent's dismissal (attached) of an unfair practice charge.

On October 18, 1999, Rumrill filed a charge alleging that the Corona-Norco Teachers Association, CTA/NEA (Association), violated the rights of six Speech & Language Pathologists (SLPs) by its failure to bargain, in 1999, on the SLPs' behalf. Such conduct by the Association was alleged to have violated section 3540 et seq. of the Educational Employment Relations Act (EERA).[2]

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[1]The charge reveals that Rumrill is the representative for Charging Parties.

[2]EERA is codified in Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

More specifically, it is alleged that the Association denied the SLPs the duty of fair representation guaranteed by EERA section 3544.9,[3] and thereby violated section 3543.6(b).[4] Following the dismissal letter, in which the Board agent found that the charge did not state a prima facie case, Rumrill filed the instant appeal.

The Board has reviewed the entire record in this case, including the unfair practice charge, the dismissal letter, Rumrill's appeal and the Association's opposition. The Board finds the dismissal letter to be free from prejudicial error, and adopts it as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. LA-CO-814 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Amador and Baker joined in this Decision.

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[3]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.

[4]Section 3543.6 provides, 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.

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
3530 Wilshire Blvd., Suite 1435
Los Angeles, CA 90010-2334
(213) 736-3127

January 6, 2000

Emily J. Rumrill

Re: Emily J. Rumrill et al. v. Corona-Norco Teachers Association, CTA/NEA
Unfair Practice Charge No. LA-CO-814
DISMISSAL AND REFUSAL TO ISSUE A COMPLAINT

Dear Ms. Rumrill:

This charge was filed October 18, 1999 against the Corona Norco Teachers Association, CTA/NEA (CNTA) by six senior, tenured Speech & Language Pathologists (SLP's) regarding CNTA's failure to bargain during 1999 on SLP's behalf over STRS credit for additional days worked by SLP's beyond their standard 196 day workyear. This conduct is alleged to violate Government Code section 3540 et seq. of the EERA. The charge reveals that Ms. Rumrill is the representative for Charging Parties. During my telephone conversation with Ms. Rumrill on January 3, 2000, she agreed to waive the receipt of a Warning Letter. I indicated that a Dismissal Letter would be sent instead.

My investigation has revealed the following information. There are about twenty-three SLP's at the Corona-Norco Unified School District (District). On February 21, 1997 CNTA sent a memorandum to all Support Personnel & Resource Specialists [comprising K-8 Counselors @ 196 day workyear, Speech & Language Pathologists @ 196 day workyear, Nurses @ 191 day workyear, Psychologists @ 201 day workyear, Resource Specialists @ 185 day workyear, Other @ 185 day workyear] concerning additional workdays for 1997-98 year round schools. The survey was to be used to help the CNTA and the District consider the feasibility of adding days to their existing collective bargaining agreement for the upcoming 97-98 school year. CNTA indicated that with this information, it would be able to open a dialogue with the District regarding extra days for Support Personnel and Resource Specialists.

In 1999, the SLP's requested an increase in supplemental pay. On May 12, 1999, CNTA responded to SLP Carol Coleman,

> During informal discussions with the District on May 11, 1999, the CNTA bargaining team presented your request and its rationale to the District's bargaining team. The District rejected the proposal to increase the daily supplemental pay to that of the CNUSD

> Psychologists. They indicated that they believed that the compensation package of CNUSD Speech and Language Pathologists is superior to and very competitive with that of Speech and Language Pathologists in surrounding districts. There was an indication that this issue could be explored in the future if there was data to suggest that compensation was not competitive. This issue could possibly be pursued by CNTA when the contract is opened for future negotiations.

The contract between the District and CNTA at Article 1, section 1.3 did not provide for reopeners for the 1999-2000, except through mutual consent. On June 4, 1999, CNTA sent a memorandum to all potential extended year contract with STRS credit unit members, with an attached list of Resource Specialists provided by the District, regarding a meeting to discuss the issues scheduled for June 11, 1999. Charging Parties assert that CNTA's notice was only sent to 185 hour workyear unit members including Michelle Dennis, a Visually Handicapped Specialist and Resource Specialists, but not to SLP's or Nurses. SLP's assert that the CNTA failed to send them the June 4, 1999 memorandum on purpose. At that time, CNTA and the District were discussing the possibility of having the additional days worked by unit members on year round multi-track extended year contracts be subject to STRS credit. The discussions in June 1999 resulted in a Memorandum of Understanding on June 28, 1999 providing for STRS Credit for additional days worked by Resource Specialists, Visually Handicapped Specialists, Adapted P.E. Specialists, and Motor and Mobility Specialists.

On June 9, 1999, CNTA wrote to the District in order to obtain a corrected list to be used in contacting everyone affected by the possible change, as follows,

> You have faxed CNTA two lists of potential extended year contract personnel. One list is for 1999-2000 Resource Specialists, both Multi-track YRS Resource Specialists and Single Track Resource Specialists. The other list was for the seven Support Personnel on Multi Track Schedules. We have received information that indicates that some teachers who are working extended contracts and fit this category have not received notification of the June 11, 1999 meeting. Please check your list and fax a corrected and updated list to CNTA by 4:00 Wednesday, June 9 so we may contact everyone that may be effective (sic) by the possible change....

On August 2, 1999, Charging Party JoAnn Ritchie complained to CNTA that its failure to notify SLP's Nurses and others about the June 11, 1999 meeting. Most SLP's were concerned as they put in a considerable number of days beyond their regular 196 day

workyear getting extra pay but no extra STRS credit. Ms. Ritchie asked for copies of some CNTA minutes involving this matter, whether CNTA requested from the District a list of all "potential extended year contract unit members", and why CNTA excluded the SLP's and others. On August 2, 1999, Ms. Ritchie sent information to CNTA hoping for SLP's to be added to those groups already receiving extended year contract days for STRS credit.

CNTA responded to Ms. Ritchie on August 27, 1999 indicating that it had "contract clarification" meetings with the District where it raised SLP's concerns but that a consensus was reached not to increase the SLP's workyear for 1999-2000, and that before a proposed five day workyear increase was implemented for SLP's effective the 2000-2001 school year, CNTA would meet with all SLP's to discuss such an increase.[1]

Charging Parties assert that negotiating the STRS benefit for SLP's was warranted as traditionally it was difficult to find enough people to fill the SLP jobs. The SLP's contend that they were improperly excluded during the regular negotiations and were only discussed later during contract "clarification" talks caused by SLP's complaining. SLP's point out that this issue has not been brought to the members for a vote and that contract negotiations can be re-opened any time based on the agreement of the parties.

Based on the above information, the charge does not state a prima facie violation.

Charging Parties have alleged that the exclusive representative denied them the right to fair representation (DFR) guaranteed by EERA section 3544.9 and thereby violated section 3543.6(b). The DFR imposed on the exclusive representative attaches during contract negotiations. To establish that the union did not fairly represent employees in contract negotiations, it must be shown that the CNTA's action was arbitrary, discriminatory or made in bad faith. See Los Angeles Unified School District (1986) PERB Decision No. 599; Sacramento City Teachers Association (1984) PERB Decision No. 428 at p.9.)

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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[1]My investigation has revealed that the District was willing to make the STRS change only for employees with workyears which were less than 196 days. Around April 1999, CNTA acquiesced on this point.

> 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 union is not required or expected to satisfy all members of the bargaining unit it represents, and the duty of fair representation "does not mean that [the exclusive representative] is barred from making contracts which may have unfavorable effects on some of the members...." Steele v. Louisville & N.R.R. et al. (1944) 323 U.S. 192 [15 LRRM 708, 712], quoted in Redlands Teachers Association (1978) PERB Decision No. 72. As noted in Redlands Teachers Association at p.5, quoting from Ford Motor Co. V. Huffman (1953) 345 U.S. 330 [31 LRRM 2548 at 2551], "...A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents..." Also, the exclusive representative is not under an obligation to negotiate a particular item benefitting certain unit members. See Los Rios College Federation of Teachers. CFT/AFT (Baker et al.) PERB Decision No. 877, cited in Los Rios College Federation of Teachers (1996) PERB Decision No. 1133. The negotiation of provisions eliminating an advantage for a small group of employees does not violate the DFR. Mount Diablo Education Association (1984) PERB Decision No 422. Nor is the duty breached when the parties negotiate provisions adversely affecting particular employees. San Francisco Classroom Teachers Association (1984) PERB Decision No 444.

The Charging Parties' allegations do not show that CNTA acted in an arbitrary, discriminatory or bad faith manner. Even if the SLP's were not notified of the June 11, 1999 meeting, it appears that CNTA attempted to obtain corrected lists for notifying employees from the District. Also, the facts alleged do not show that CNTA's failure to garner a benefit for the SLP's was done as retaliation for protected activity, or done for any other invalid reason. Finally, CNTA's failure to provide the requested minutes, and its failure to answer several questions, in and of itself, does not indicate a violation of the DFR.

Accordingly, I am dismissing the charge.

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 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
Marc S. Hurwitz
Regional Attorney

Attachment

cc: Marianne Reinhold, Esq. of Reich, Adell, Crost & Cvitan, Los Angeles, CA.