STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

DIANE UNDERHILL, Charging Party, v. CALIFORNIA TEACHERS ASSOCIATION, Respondent.	Case No. SF-CO-588-E PERB Decision No. 1466 November 26, 2001

Appearances: Phillip J. Griego, Attorney, for Diane Underhill; Diane Ross, Attorney, for California Teachers Association.

Before Amador, Baker and Neima, Members.

DECISION

NEIMA, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Diane Underhill (Underhill) of a Board agent's dismissal of her unfair practice charge. The charge alleged that the California Teachers Association breached its duty of fair representation, guaranteed by section 3544.9, and thereby violated section 3543.6(b) of the Educational Employment Relations Act (EERA),[1] when it failed to assist Underhill in filing a grievance against her employer.

[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3544.9 states:

> 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.

Section 3543.6 states, in pertinent part:

> It shall be unlawful for an employee organization to:

Underhill's unfair practice charge was filed by her counsel and she filed a notice of appearance form designating her counsel as her representative.

In a warning letter dated July 19, 2001, the Board agent notified Underhill of the deficiencies in her charge, including the fact that she had not named the proper respondent. In the warning letter the Board agent informed Underhill that if he did not receive an amended charge or a withdrawal of the charge before July 27, 2001, he would dismiss her unfair practice charge. The Board agent dismissed the charge by letter dated July 31, 2001. The dismissal letter stated that an amended charge had not been filed in response to the deficiencies noted in the warning letter. Neither the warning nor dismissal letters were served on Underhill's attorney of record.

In her appeal, Underhill contends that the Board agent's failure to serve a copy of his warning letter on her attorney denied her the opportunity to file an amended charge, since she assumed that her attorney had received a copy of the warning letter and would respond.

In Ramona Unified School District (1984) PERB Decision No. 472, the Board remanded a case where the Board agent did not contact the charging party's attorney for input prior to deferring the charge. Furthermore, the Board has previously determined it appropriate to remand a charge to the General Counsel for further investigation and processing where the Board agent failed to receive a properly filed amended charge and, thus, did not have the opportunity to consider new allegations raised in the amended charge. (Hartnell Community College District (2000) PERB Decision No. 1405 (Hartnell CCD).)

> (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.

In this case, the Board agent did not provide Underhill's attorney of record with a copy of the warning letter. Since Underhill filed a notice of appearance designating her attorney as her representative, her attorney should have received a copy of the warning letter to enable him to respond. As in Hartnell CCD, the Board agent did not have the opportunity to consider any new information which he may have received in a properly amended charge.

EERA section 3541.3(i)[2] empowers the Board to take such action it deems necessary to effectuate the policies of EERA. Accordingly, the Board finds it appropriate to remand this case to the Board agent for further investigation and permit Underhill to file an amended unfair practice charge.

ORDER

The Board ORDERS that Case No. SF-CO-588-E is hereby REMANDED to the Office of the General Counsel for further investigation and processing in accordance with this Decision.

Members Amador and Baker joined in this Decision.

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[2]Section 3541.3 states, in pertinent part:

> The board shall have all of the following powers and duties:
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> (i) To investigate unfair practice charges or alleged violations of this chapter, and take any action and make any determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies of this chapter.