



**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

JOYCE SINGER ABRAMS,

Charging Party,

v.

CHULA VISTA ELEMENTARY EDUCATORS
ASSOCIATION,

Respondent.

Case No. LA-CO-1130-E

PERB Decision No. 1554

October 22, 2003

Appearances: Joyce Singer Abrams, on her own behalf; California Teachers Association by Rosalind D. Wolf, Attorney, for Chula Vista Elementary Educators Association.

Before Baker, Whitehead and Neima, Members.

DECISION

BAKER, Member: This case is before the Public Employment Relations Board (Board) on appeal by Joyce Singer Abrams (Abrams) from a Board agent's dismissal (attached) of her unfair practice charge. The charge alleges that the Chula Vista Elementary Educators Association (CVE) violated section 3544.9 of the Educational Employment Relations Act (EERA)¹ by breaching its duty of fair representation.

¹ EERA is codified at Government Code section 3540 et seq. 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.

The Board has reviewed the entire record in this matter, including the original and amended charge, the warning and dismissal letters, Abrams' appeal and CVE's response. 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-1130-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Whitehead and Neima joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8386
Fax: (916) 327-6377



June 11, 2003

Joyce Singer Abrams
P.O. Box 786
La Jolla, CA 92038

Re: Joyce Singer Abrams v. Chula Vista Elementary EA
Unfair Practice Charge No. LA-CO-1130-E
DISMISSAL LETTER

Dear Ms. Abrams:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on March 14, 2003. Joyce Singer Abrams alleges that the Chula Vista Elementary EA (CVEA) violated the Educational Employment Relations Act (EERA)¹ by removing her from a joint union-employer committee.

I indicated to you in my attached letter dated April 24, 2003, 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 1, 2003, the charge would be dismissed. You requested and received an extension of time to file an amended charge.

I received your amended charge on May 15, you filed a supplement on May 23, 2003. You continue to allege the your union, CVEA, improperly removed you as a union designated panel member of the Peer and Assistance Review (PAR) advisory committee.

In my letter of April 24, I stated that the charge did not appear timely filed because the union had originally determined to remove you as a union panel member in May of 2002. Your amended charge states that on November 18, 2002, the CVEA Representative Council announced your PAR term would expire June 30, 2003. On January 6, 2003, the CVEA again considered your removal and voted to discontinue your services as a PAR panel member. Because of these actions, you contend that the filing of your charge on March 14, 2003 is timely.

Assuming your charge is timely filed, you have still not established a prima facie case of a violation of the EERA. You assert that CVEA violated its "Bylaws and the U.S. Constitution" when it removed you as a union representative to the PAR panel. You also contend that

¹ EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

CVEA/CTA violated your rights by not affording you legal representation in the filing and processing of this unfair practice charge. You also state that the CVEA grievance chair "has made a public Association announcement of my filing this PERB action."

With your supplemental filing you assert that there are "economic consequences" to being removed from the PAR panel. The collective bargaining agreement provides that "If, in carrying out their responsibilities as members of the Joint Committee, teachers find it necessary to work beyond their regular workday or work year they shall be compensated at the unit member's pro rata hourly rate" up to \$4000 the first year and \$3000 in subsequent years.

With these actions, you contend that CVEA has violated its duty of fair representation.

As described in my letter of April 24, the duty of fair representation imposed on the exclusive representative extends to collective bargaining and 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 Respondent's conduct was arbitrary, discriminatory or in bad faith. In United Teachers of Los Angeles (Collins), the Public Employment Relations Board stated:

PERB has determined that the duty of fair representation does not extend to a union's determination as to which bargaining unit members should serve on a joint union-management committee. Such a determination is an internal union matter. Rio Hondo College Faculty Association, CTA/NEA (Furriel) (1986) PERB Decision No. 583

The primary allegation in your charge continues to be your removal from the PAR position by CVEA. As discussed, this internal union matter does not demonstrate a violation of the duty of fair representation.

You also allege that the union failed to represent you when it did not provide you with legal representation in this matter. The Board has determined that the duty of fair representation is limited to contractually based remedies under the union's exclusive control; it does not include administrative relief over which the union does not have exclusive control. San Francisco Classroom Teachers Association, CTA/NEA (Chestangúe) (1985) PERB Decision No. 544. Processing an unfair practice charge with PERB is available without union assistance. Accordingly, it is not within a union's duty of fair representation and this allegation must be dismissed.

You also allege that the union's "grievance chair has made a public Association announcement of my filing this PERB action." The test for whether a respondent has interfered with the rights of employees under the EERA does not require that unlawful motive be established, only that at least slight harm to employee rights results from the conduct. The Board described the standard as follows:

[I]n order to establish a prima facie case of unlawful interference, the charging party must establish that the respondent's conduct tends to or does result in some harm to employee rights granted under EERA. (State of California (Department of Developmental Services) (1983) PERB Decision No. 344-S, citing Carlsbad Unified School District (1979) PERB Decision No. 89; Service Employees International Union, Local 99 (Kimmitt) (1979) PERB Decision No. 106.)

Under the above-described test, a violation may only be found if EERA provides the claimed rights. In Clovis Unified School District (1984) PERB Decision No. 389, the Board held that a finding of coercion does not require evidence that the employee actually felt threatened or intimidated or was in fact discouraged from participating in protected activity.

An announcement by a union that it is subject to an unfair practice charge by a union member does not appear to unlawfully interfere with an employee's right to file a charge or engage in other activity protected by the EERA. I am aware of no limitation of a union's right to inform members of such a charge and the allegations therein. Accordingly, this allegation must also be dismissed.

I am dismissing the charge based on the facts and reasons contained herein and in my April 24 letter.

Right to Appeal

Pursuant to PERB Regulations,² 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. (Regulation 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. (Regulations 32135(a) and 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 Regulation 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. (Regulations 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

² PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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. (Regulation 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 Regulation 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. (Regulation 32135(c).)

Extension of Time

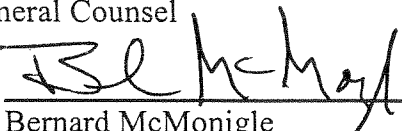
A request for an extension of time, in which to file a document with the Board itself, must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. 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. (Regulation 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
General Counsel

By



Bernard McMonigle
Regional Attorney

Attachment

cc: Rosalind D. Wolf

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8386
Fax: (916) 327-6377



April 24, 2003

Joyce Singer Abrams
P.O. Box 786
La Jolla, CA 92038

Re: Joyce Singer Abrams v. Chula Vista Elementary EA
Unfair Practice Charge No. LA-CO-1130-E
WARNING LETTER

Dear Ms. Abrams:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on March 14, 2003. Joyce Singer Abrams alleges that the Chula Vista Elementary EA violated the Educational Employment Relations Act (EERA)¹ by removing her from a joint union-employer committee.

Your charge states the following. Pursuant to a collective bargaining agreement between CVEEA and the employer, a Peer Assistance and Peer Review (PAR) committee was established in the fall of 2000. At that time you were selected by CVEEA to be one of three teacher members.

On May 6, 2002, the committee determined that the CVEEA positions would be staggered and that your term would expire first, June 3, 2002. Since that time, you have pursued various avenues within CVEEA and CTA to be reinstated to the committee. While not quite clear from the charge, it appears that there were seven actions to support the decision of the committee and four actions to reinstate you.² You have sent two letters of appeal to the CVEEA Board, which have not been acted upon. You allege that you have been improperly treated by CVEEA as you have sought to learn why you were voted off the panel and attempted to be reinstated. It is not clear from your charge how CVEEA responded to requests for such information.

EERA section 3541.5(a)(1) prohibits PERB from issuing a complaint with respect to "any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (Gavilan Joint Community College District (1996) PERB Decision No. 1177.) The charging party bears the burden of demonstrating that the charge is timely filed. (Tehachapi Unified School District (1993) PERB Decision No. 1024; State of California (Department of Insurance) (1997) PERB Decision No. 1197-S.)

¹ EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

² It is not stated which entity took these actions. However, presumably these were part of an internal union procedure.

April 24, 2003

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The vote for your term to end took place on May 6, 2002, and this charge was not filed until March 14, 2003. It is not clear from your charge that CVEEA took actions after that date that you allege to be separate violations of EERA. Rather, your charge states that you have sought internal resolution of the May 6 action for 10 months and that the panel decision has resulted in "ongoing harm".

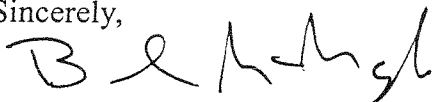
You request that the six month statutory limitations period be tolled during the time you sought an internal resolution. However, the EERA only provides for tolling of the statutory limitations period during the processing of a grievance under the collective bargaining agreement. Such tolling does not appear applicable in this matter as it involves a dispute with the union and not the employer. Accordingly, the charge is untimely filed and must be dismissed.

Even if your charge had been timely filed, it does not demonstrate a violation. 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 collective bargaining and 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 Respondent's conduct was arbitrary, discriminatory or in bad faith. In United Teachers of Los Angeles (Collins), the Public Employment Relations Board stated:

PERB has determined that the duty of fair representation does not extend include a union's determination as to which bargaining unit members should serve on a joint union-management committee. Such a determination is an internal union matter. Rio Hondo College Faculty Association, CTA/NEA (Furriel) (1986) PERB Decision No. 583

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 that 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 1, 2003, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,



Bernard McMonigle
Regional Attorney