

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LINDA LOU KESTIN,

Charging Party,

v.

UNITED TEACHERS OF LOS ANGELES,

Respondent.

Case No. LA-CO-1120-E

PERB Decision No. 1594

February 9, 2004

Appearances: Linda Lou Kestin, on her own behalf; Geffner & Bush by Steven K. Ury, Attorney, for United Teachers of Los Angeles.

Before Baker, Whitehead and Neima, Members.

DECISION

NEIMA, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Linda Lou Kestin (Kestin) from a Board agent's dismissal (attached) of her unfair practice charge. The charge alleged a violation of the duty of fair representation by the United Teachers of Los Angeles (UTLA). The Board agent dismissed the charge for failure to include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice" as required by PERB Regulation 32615(a)(5).¹

The Board has reviewed the entire record in this matter, including the original and amended charge, the warning and dismissal letter, Kestin's appeal and UTLA's response. The Board finds the dismissal letter to be free of prejudicial error and adopts it as the decision of the Board itself.

¹PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

ORDER

The unfair practice charge in Case No. LA-CO-1120-E is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Members Baker and Whitehead joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8387
Fax: (916) 327-6377



December 10, 2002

Linda Lou Kestin

Re: Linda Lou Kestin v. United Teachers of Los Angeles
Unfair Practice Charge No. LA-CO-1120-E
DISMISSAL LETTER

Dear Ms. Kestin:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on November 15, 2002. You allege that the United Teachers of Los Angeles violated the Educational Employment Relations Act (EERA)¹ by refusing to represent you in some matter with your employer, Los Angeles Unified School District.

On November 22, 2002, I wrote to you advising that in order to process the charge, PERB needed an original signature on the unfair practice charge form and that you failed to provide the attachment that you referenced in the charge. (The attachment must contain the basis of your allegation because the charge as filed fails to provide any facts which state a violation of the EERA.)

I indicated to you in my attached letter dated November 26, 2002, 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 December 6, 2002, the charge would be dismissed.

I have not received either an amended charge or a request for withdrawal.² Therefore, I am dismissing the charge based on the facts and reasons contained in my November 26, 2002, letter.

Right to Appeal

Pursuant to PERB Regulations,³ 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

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 You faxed a document in which you assert that PERB is "not getting off the hook," but provided no other information.

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.)

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

³ PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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 _____
Roger Smith
Labor Relations Specialist

Attachment

cc: John Perez, President

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8387
Fax: (916) 327-6377



November 26, 2002

Linda Lou Kestin

Re: Unfair Practice Charge No. LA-CO-1120-E
WARNING LETTER

Dear Ms. Kestin:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on November 15, 2002. You allege that the United Teachers of Los Angeles violated the Educational Employment Relations Act (EERA)¹ by refusing to represent you in some matter with your employer, Los Angeles Unified School District.

On November 22, 2002, I wrote to you advising that in order to process the charge, PERB needed an original signature on the unfair practice charge form and that you failed to provide the attachment that you referenced in the charge. (The attachment must contain the basis of your allegation because the charge as filed fails to provide any facts which state a violation of the EERA.)

On November 25, 2002, you submitted a copy of a charge form with an original signature, but failed to provide any more information or the attachment you referenced in your November 15 filing. You wrote "You have the rest of the complaint." Unfortunately, I do not have it, as it was not attached or included with the material filed on November 15.

PERB Regulation 32615(a)(5) requires, inter alia, that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." Thus, the charging party's burden includes alleging the "who, what, when, where and how" of an unfair practice. (State of California (Department of Food and Agriculture) (1994) PERB Decision No. 1071-S, citing United Teachers-Los Angeles (Ragsdale) (1992) PERB Decision No. 944.) Mere legal conclusions are not sufficient to state a prima facie case. (Ibid.; Charter Oak Unified School District (1991) PERB Decision No. 873.) Your charge as currently filed does not provide sufficient facts to ascertain what happened or when it occurred.

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

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.

LA-CO-1120-E
November 26, 2002
Page 2

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 December 6, 2002, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Roger Smith
Labor Relations Specialist