

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CARL E. RICHARDS,
Charging Party,

v.

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION & ITS CHAPTER 183,

Respondent.

Case Nos. LA-CO-1159-E
LA-CO-1160-E

PERB Decision No. 1716

November 30, 2004

Appearance: Carl E. Richards, on his own behalf.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Carl E. Richards (Richards) of a Board agent's dismissal (attached) of his unfair practice charges. The charges allege that the California School Employees Association and its Chapter 183 (CSEA) violated the Educational Employment Relations Act (EERA)¹ by breaching its duty of fair representation. Charges were filed separately against CSEA as Case No.'s LA-CO-1159-E and LA-CO-1160-E, respectively but were consolidated by the Board agent since they are nearly identical.

The Board has reviewed the entire record in this matter, including the unfair practice charges, the amended unfair practice charges, the warning and dismissal letters and Richards' appeal. Based on this review, the Board adopts the Board agent's dismissal as a decision of the Board itself.

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

On appeal, Richards raises new evidence via declarations from two coworkers regarding the District's reduction of maximum carryover to 40 hours per year and the detrimental effect to them. Richards states that he has raised this evidence to show that CSEA has failed to investigate the issue thoroughly.

PERB Regulation 32635(b)² states that, "unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence." These declarations comprise new supporting evidence; however, Richards has not explained the need to raise this new evidence at this time, and not in his unfair practice charge or amended unfair practice charge. The Board therefore finds that Richards has not shown good cause to raise the new evidence on appeal.

ORDER

The unfair practice charge in Case No. LA-CO-1159-E and Case No. LA-CO-1160-E are hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member Neima joined in this Decision.

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

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1023
Fax: (510) 622-1027



December 12, 2003

Theodore Osorio
2385 Peacock Ave.
San Bernardino, CA 92346

Re: Carl E. Richards v. California School Employees Association
Unfair Practice Charge No. LA-CO-1159-E

Carl E. Richards v. CSEA Chapter 183
Unfair Practice Charge No. LA-CO-1160-E
DISMISSAL LETTER

Dear Mr. Osorio:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on November 4, 2003. Carl E. Richards alleges that the California School Employees Association and CSEA Chapter 183 violated the Educational Employment Relations Act (EERA)¹ by violating the duty of fair representation. I indicated to you in my attached letter, that the above-referenced charges did not state a prima facie case. Richards was advised that, if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, he should amend the charges. He was further advised that, unless he amended the charges to state a prima facie case or withdrew them the charge would be dismissed. He amended both of the charges.

Richards' grievance alleged the District violated the parties' vacation policy. CSEA denied Richards' request to appeal the grievance to Level III and explained the grievance did not articulate contract violations.

The warning letter explained that the collective bargaining agreement provided for the accumulation of twenty-five vacation days and that the charge failed to demonstrate CSEA had acted in an arbitrary, discriminatory or bad faith manner. The first amended charges allege CSEA violated its duty of fair representation by: arbitrarily ignoring supporting evidence for his grievance, issuing emails in bad faith, and failing to provide attention to details.

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.

Richards' grievance states, in pertinent part:

The past practice of article xiv section 16 paragraph bl and all other relevant articles and practice be restored and that all classified personnel be made whole and/or all relevant remedies, [sic]

The section specified in Richards' grievance does not exist in the parties' latest CBA, which is quoted below. However, that particular reference corresponds to the parties' 1987 CBA, which allowed employees to accumulate thirty days.

Article XIV of the parties' latest CBA provides, in pertinent part:

B. Full-time unit members shall be allowed to carry over up to a total of five (5) vacation days into the next fiscal year.

(1) With the approval of the immediate supervisor and the District's chief Human Resources officer or his designee, a unit member may carry over more than five (5) days, but not to exceed a total accumulation of twenty-five (25) days, [emphasis added.]

(2) If a unit member has been prevented from using vacation credit as a result of the needs of the District, the District shall pay for all of the unit member's accumulated vacation in excess of the maximum accumulation.

Section 6.10 of the District's Personnel Manual provides:

At the option of a twelve-month employee, unused vacation may be accumulated from year to year at the rate of not more than 5 days per year and shall be limited to a maximum cumulative amount of 30 days; except that if an employee is not permitted by his/her supervisor to take his/her annual vacation the amount not taken shall accumulate for use in the next year or be paid for in cash at the option of the Board of Education.

On February 8, 2003 CSEA emailed Richards explaining that the District had not changed the parties' policy and the employees could still accumulate forty hours per year up to a total of 200 hours. On February 11, 2003, CSEA explained to Richards that it would correct misconceptions regarding the District's policy shortly. On February 26, 2003 and March 7, 2003, CSEA participated in informational meetings to clarify the policy.

The above-stated information fails to state a prima facie violation for the reasons that follow.

As stated in the warning letter, to state a prima facie violation of the duty of fair representation the charging party must demonstrate the exclusive representative acted in an arbitrary, discriminatory or bad faith manner.

The charges do not demonstrate CSEA's refusal to pursue Richards' grievance to Level HI was arbitrary, discriminatory or in bad faith. The collective bargaining agreement limits the number of days that can be accumulated to twenty-five. CSEA's reliance on the collective bargaining agreement cannot be considered arbitrary conduct even if the language of the personnel manual differs. Nor does CSEA's correspondence on the subject demonstrate bad faith as CSEA promptly responded to Richards' concerns and sought to clarify the parties' policy. Thus, for the above-stated reasons and those stated in the warning letter the charge must be dismissed.

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.)

The Board's address is:

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

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

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 Tammy Samsel
Tammy Samsel
Regional Attorney

Attachment

cc: Charmaine L. Huntting

PUBLIC EMPLOYMENT RELATIONS BOARD



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November 18, 2003

Carl E. Richards
5710 Belvedere Avenue
Highland, CA 92346

Re: Carl E. Richards v. California School Employees Association
Unfair Practice Charge No. LA-CO-1159-E

Carl E. Richards v. CSEA Chapter 183
Unfair Practice Charge No. LA-CO-1160-E
WARNING LETTER

Dear Mr. Richards:

The above-referenced unfair practice charges were filed with the Public Employment Relations Board (PERB or Board) on November 4, 2003. Carl E. Richards alleges the California School Employees Association and the CSEA Chapter 183 violated the Educational Employment Relations Act (EERA)¹ by violating their duty of fair representation. Although filed against different respondents, the charges present identical facts and are therefore addressed together. On November 17, 2003, I left a message for you concerning these charges.

The San Bernardino City School District employs Carl E. Richards in the classified bargaining unit exclusively represented by the California School Employees Association and its Chapter 183 (CSEA). Richards alleges CSEA conspired with the District to override the grievance procedure.

On February 3, 2003, the District issued a memorandum providing, in pertinent part:

... all vacation carry over for classified employees in excess of five (5) days must be approved in writing by the Classified Human Resources office. Due to the state of the current budget crisis that we are facing, all administrators/supervisors are to immediately monitor vacation time that classified employee have accumulated to date and ensure that this time is scheduled and used prior to the end of the 2002-2003 school year.

On February 8, 2003, Richards asked CSEA Representative Marcia Kushner about the District's memo. Kushner advised Richards that the District was following the parties'

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.

collective bargaining agreement. Richards expressed concern regarding the District's policy. On February 11, 2003, Kushner explained that Richard's misconceptions would be corrected by the end of the week.

On February 12, 2003, Richards filed a grievance on this issue. On February 21, 2003, Richard's immediate supervisor denied his grievance.

On February 24, 2003, the District issued a memo clarifying the issue. On February 26, 2003 and March 7, 2003, CSEA and District representatives held informational meetings regarding this issue. On March 7, 2003, Richards raised his grievance to Level II. On March 17, 2003, the District denied the grievance at Level II. Richards requested that CSEA appeal the grievance to Level III. On May 10, 2003, CSEA's Executive Board denied Richard's request, explaining the grievance did not articulate contract violations.

Article XIV, Section B of the parties' CBA provides:

Full-time unit members shall be allowed to carry over up to a total of five (5) vacation days into the next fiscal year.

(1) With the approval of the immediate supervisor and the District's Chief Human Resource Officer or his designee, a unit member may carry over more than five (5) days, but not to exceed a total accumulation of twenty-five (25) days.

(2) If a unit member has been prevented from using vacation credit as a result of the needs of the District, the District shall pay for all of the unit member's accumulated vacation in excess of the maximum accumulation.

Richards alleges the District reduced the maximum cumulative amount of days of vacation from 30 days to 25 days.

The above-stated information fails to state a prima facie violation for the reasons that follow.

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 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:

Absent bad faith, discrimination, or arbitrary conduct, mere negligence or poor judgment in handling a grievance does not constitute a breach of the union's duty. [Citations omitted.]

A union may exercise its discretion to determine how far to pursue a grievance in the employee's behalf as long as it does not arbitrarily ignore a meritorious grievance or process a grievance in a perfunctory fashion. A union is also not required to process an employee's grievance if the chances for success are minimal.

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 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 District's February 3, 2003 memorandum provides that employees may carryover five vacation days per year, and that any excess carryover must be approved by the Classified Human Resources office. The parties' CBA also indicates that no more than twenty-five days may be accumulated in total. Although Richards contends the District reduced the limit on the number of total days that can be accumulated from thirty to twenty-five, the parties' CBA states otherwise. CSEA quickly responded to Richards' concerns, participated in informational meetings for the employees on this issue, and explained its decision for not appealing Richard's grievance. The charges do not provide facts demonstrating CSEA acted in an arbitrary, discriminatory or bad faith manner. Thus, the charges must be dismissed.

For these reasons the charges, 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 charges. The amended charges 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 charges must have the case number written on the top right hand corner of the charge form. The amended charges 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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November 18, 2003
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amended charge or withdrawal from you before November 26, 2003, I shall dismiss your charges. If you have any questions, please call me at the above telephone number.

Sincerely,

A handwritten signature in cursive script that reads "Tammy Samsel". The signature is written in black ink and is positioned above the typed name.

Tammy Samsel
Regional Attorney

TLS