

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



VIRGILIO NEVES CARDOSO,

Charging Party,

v.

TEAMSTERS LOCAL 228,

Respondent.

Case No. SF-CO-666-E

PERB Decision No. 1845

May 19, 2006

Appearance: Virgilio Neves Cardoso, on his own behalf.

Before Duncan, Chairman; Shek and Neuwald, Members.

DECISION

DUNCAN, Chairman: This case comes before the Public Employment Relations Board (PERB or Board) on an appeal by Virgilio Neves Cardoso (Cardoso) of a Board agent's dismissal (attached) of his unfair practice charge. Cardoso alleges that Teamsters Local 228 (Teamsters) violated its duty of fair representation under the Educational Employment Relations Act (EERA)¹ when it failed to assist him in filing an unfair practice charge with PERB in a prior case.

We have reviewed the entire record in this matter, including the unfair practice charge, the warning and dismissal letters and Cardoso's appeal. We find the Board agent's warning and dismissal letters to be free from prejudicial error and adopt them as the decision of the Board itself, subject to the discussion below.

BACKGROUND

Cardoso was employed by the Alum Rock Union Elementary School District (District) as a custodian. In the fall of 2003, the District transferred Cardoso to Ryan Elementary School

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

(School). In December 2003, Cardoso began experiencing extreme pain due to a dislocated shoulder. Cardoso received medical assistance for his condition. Cardoso's condition hindered the performance of his responsibilities at the School. On December 16, Cardoso spoke with his supervisor at the District office. Cardoso's supervisor requested that Cardoso leave his work keys with him, and Cardoso surrendered his work keys.

On January 5, 2004, the District sent a letter to Cardoso claiming that he voluntarily terminated his employment in a verbal exchange with the principal at the School on December 16, 2003.

On July 14, 2005, Cardoso filed an unfair practice charge against the District alleging unlawful discrimination.² The Board agent dismissed the charge for failure to state a prima facie case of retaliation.

Cardoso filed another unfair practice charge on November 4, 2005, alleging that the Teamsters violated its duty of fair representation by failing to assist Cardoso in his prior charge against the District. On November 15, the Board agent sent Cardoso a warning letter stating that Cardoso had failed to allege a prima facie case. On January 19, 2006, the Board agent dismissed Cardoso's unfair practice charge. Cardoso now appeals this dismissal.

DISCUSSION

The duty of fair representation guaranteed by EERA section 3544.9³ extends to the handling of grievances as delineated in an applicable collective bargaining agreement.

(San Francisco Classroom Teachers Association, CTA/NEA (Chestangue) (1985) PERB

Decision No. 544; Los Rios College Federation of Teachers, Local 2279, CFT/AFT, AFL-CIO

²That unfair practice charge was designated Case No. SF-CE-2509-E.

³EERA section 3544.9 provides that an "exclusive representative for the purpose of meeting and negotiating shall fairly represent each and every employee in the appropriate unit."

(Deglow) (1993) PERB Decision No. 992.) This duty does not extend to the filing of, or assistance in filing, an unfair practice charge before PERB. (See Service Employees International Union, Local 790, AFL-CIO (Banks and Molidpiree) (2004) PERB Decision No. 1636-M; California State Employees Association (Bradford) (2001) PERB Decision No. 1421-S.)

In the Board agent's warning letter to Cardoso, the Board agent stated that "PERB has held that there is no duty for the union to file an unfair practice charge with PERB on an employee's behalf." The Board agent cites to California State Employees Association (Sandberg) (2004) PERB Decision No. 1694 (Sandberg) for this proposition. We do not believe that Sandberg stands for this proposition. In that case, an employee filed an unfair practice charge against the union alleging that the union failed to represent her in her appeals process before the State Personnel Board (SPB). The Board held that the duty of fair representation does not extend to the appeals process before the SPB. (Ibid.) Thus, while that case may stand for the proposition that the duty of fair representation does not extend to administrative processes outside the collective bargaining agreement, it did not specifically hold that the duty does not extend to the filing of unfair practice charges before the PERB.

In California School Employees Association (Mrvichin) (1988) PERB Decision No. 660 (CSEA (Mrvichin)), the Board upheld the Board agent's dismissal of the employee's unfair practice charge alleging the union failed to provide representation regarding an unfair practice charge at PERB. The Board explained the right to file an unfair practice charge was not exclusive to the union and the duty of fair representation did not extend to providing assistance with the employee's charge. (CSEA (Mrvichin) citing San Francisco Classroom Teachers Association, CTA/NEA (Chestangúe) (1985) PERB Decision No. 544, a case not involving the PERB process, but stating there is no duty of fair representation owed to a unit

member unless the exclusive representative possesses the exclusive means by which the employee can obtain a particular remedy.)

In another Board decision, the employee alleged that the union violated its duty of fair representation by failing to represent him in an informal conference conducted by PERB. The Board found there is no obligation on the part of an exclusive representative to provide representation for a member of a bargaining unit in extra-contractual matters not under its exclusive control. (California School Employees Association (Mrvichin) (1988) PERB Decision No. 661.)

Most recently, the Board held that since PERB is a forum outside the contract, the exclusive representative did not owe members a duty of fair representation in proceedings involving PERB. (Los Rios College Federation of Teachers, Local 2279 (Deglow) (2003) PERB Decision No. 1515.)

We hold that an employee organization is not obligated under the duty of fair representation to assist an employee in filing or appealing an unfair practice charge before PERB. Cardoso's unfair practice charge against the Teamsters must be dismissed for failure to state a prima facie case.

ORDER

The unfair practice charge in Case No. SF-CO-666-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Shek and Neuwald joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

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



January 19, 2006

VIRGILIO NEVES CARDOSO
111 N 33rd Street
San Jose, CA 95116

Re: Virgilio Cardoso v. Teamsters Local 228
Unfair Practice Charge No. SF-CO-666-E
DISMISSAL LETTER

Dear Mr. Cardoso:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on November 4, 2005. The Virgilio Cardoso alleges that the Teamsters Local 228 violated the Educational Employment Relations Act (EERA)¹ by failing to represent you in a previous unfair practice charge against your employer.

I indicated to you in my attached letter dated November 15, 2005, 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 November 23, 2005, the charge would be dismissed.

You requested, and were granted, several extensions of the November 23, 2005 deadline, during which you apparently attempted to secure legal representation and translation services. You also presented me with documents demonstrating that you may have been the victim of identity theft, which you believe has aggravated your attempts to resolve this and other legal matters affecting your employment. You also spoke with a labor representative in the Sacramento office regarding these concerns. However, as was explained to you during these visits, PERB is unable to assist you with concerns related to possible identity theft and other criminal activity that is not a violation of the EERA.

As stated in the November 15, 2005 letter, you have not demonstrated that the Union breached any duty when it refused to assist you in filing previous unfair practice charge number SF-CE-2509-E. I have not received either an amended charge or a request for withdrawal. Therefore,

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.

I am dismissing the charge based on the facts and reasons contained in my November 15, 2005 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. (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).)

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

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 

Alicia Clement
Regional Attorney

Attachment

cc: Chuck Brooks, Business Representative
Teamsters Local 228
4600 47th Street
Sacramento, CA 95824

Costa Kerestenzis
Beeson, Tayer & Bodine
520 Capitol Mall, Suite 300
Sacramento, CA 95814

PUBLIC EMPLOYMENT RELATIONS BOARD

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



November 10, 2005

Virgilio Cardoso
111 N 33rd Street
San Jose, CA 9511

Re: Virgilio Cardoso v. Teamsters Local 228
Unfair Practice Charge No. SF-CO-666-E
WARNING LETTER

Dear Mr. Cardoso:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on November 4, 2005. The Virgilio Cardoso alleges that the Teamsters Local 228 violated the Educational Employment Relations Act (EERA)¹ by failing to represent you in a previous unfair practice charge against your employer.

My investigation revealed the following. On July 14, 2005, you filed an unfair practice charge number SF-CE-2509-E, against the Alum Rock Union Elementary School District. On August 12, 2005, the Regional Attorney sent you a Warning Letter, indicating that you had failed to allege a prima facie complaint, and informing you of the standard that must be met for a charge of unlawful discrimination. You requested and were granted, several extensions to file an Amended Charge. During that time, you apparently attempted to secure some assistance from your union in filing an amended charge against the District. On September 21, 2005, the Regional Attorney dismissed your unfair practice charge number SF-CE-2509-E, for failure to allege the prima facie elements of a discrimination complaint.

The present charge, filed on November 4, 2005, states in its entirety:

An earlier charge was filed against the Alum Rock Union Elementary School District without any constructive action by the Teamster [sic] Union. This charge is now against the Union for not doing due diligence in representing me on my behalf. The original issue stems from the fact that I was a victim of discrimination on the job due in part to a misrepresentation of identity. Identity misrepresentation was distributed to other locations/positions in the District.

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.

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Your charge must fail for the following reason. PERB has held that there is no duty for the union to file an unfair practice charge with PERB on an employee's behalf. (California State Employees Association (Sandberg) (2004) PERB Decision No. 1694.) Because the Teamster's Union was not obligated to assist you in filing or amending unfair practice charge number SF-CE-2509-E, its failure to assist you was not a violation of the statute or PERB's regulations.

For this reason 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 November 18, 2005, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,



Alicia Clement
Regional Attorney

AC