

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ANGELA M. ESTACIO & JUAN A. MARTINEZ,

Charging Party,

v.

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION & ITS CHAPTER 007,

Respondent.

Case No. SA-CO-503-E

PERB Decision No. 1874

December 29, 2006

Appearance: Angela M. Estacio & Juan A. Martinez, on their own behalf.

Before Shek, McKeag and Neuwald, Members.

DECISION

SHEK, Member: This case comes before the Public Employment Relations Board (Board) on appeal by Angela M. Estacio and Juan A. Martinez of a Board agent's dismissal (attached) of their unfair practice charge. The charge alleged that the California School Employees Association and its Chapter 007 (CSEA) violated the Educational Employment Relations Act (EERA)¹ sections 3544.9 and 3543.6 by failing to comply with the duty of fair representation. The Board agent found the allegations to be barred under the six-month statute of limitations.

The Board has reviewed the entire record in this case, including, but not limited to, the unfair practice charge, the amended unfair practice charge, CSEA's position statement, the warning and dismissal letters, and the appeal letter. Based on this review, the Board adopts the warning and dismissal letters as the decision of the Board itself.

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

ORDER

The unfair practice charge in Case No. SA-CO-503-E is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Members McKeag and Neuwald joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8383
Fax: (916) 327-6377



July 27, 2005

Angela M. Estacio
P.O. Box 363
Denair, CA 95316

Juan A. Martinez
P.O. Box 363
Denair, CA 95316

Re: Angela M. Estacio & Juan A. Martinez v. California School Employees Association & its Chapter 007
Unfair Practice Charge No. SA-CO-503-E
DISMISSAL LETTER

Dear Ms. Estacio and Mr. Martinez:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on March 28, 2005. Angela M. Estacio & Juan A. Martinez allege that the California School Employees Association & its Chapter 007 (CSEA) violated the Educational Employment Relations Act (EERA)¹ by failing to comply with its duty of fair representation.

On July 1, 2005, General Counsel Robert Thompson indicated to you in the attached letter 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 July 15, 2005, the charge would be dismissed. Your request for an extension of time was granted and a First Amended Charge was filed on July 25, 2005.

Discussion

In his July 1, 2005 letter, Mr. Thompson separately analyzed four separate sets of facts to determine whether the charge alleged a prima facie case of the breach of the duty of fair representation by CSEA. The four separate allegations concerned Ms. Estacio's June 24, 2003 grievance; Ms. Estacio's termination; Mr. Martinez's February 2004 complaint; and Mr. Martinez's administrative leave and resignation. In addition to finding that each of the separate allegations failed to state a prima facie case, Mr. Thompson also found that each of

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.

the alleged violations involved conduct that occurred more than six months prior to the filing of the charge.

The First Amended Charge provides a three page narrative, plus voluminous documents relating to the employment histories of the charging parties and their interaction with CSEA regarding representation on the various disputes with their employer, the Modesto City School District. The narrative focuses on allegations that CSEA's representatives provided inaccurate information to PERB in this matter, as well as assertions regarding the inadequacy of their representation of, and even hostility exhibited toward, Ms. Estacio and Mr. Martinez.

However, the First Amended Charge does not address the statute of limitations issue raised by CSEA's response to the charge and Mr. Thompson's July 1, 2005 letter. As discussed in the July 1, 2005 letter, 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 statute of limitations is an affirmative defense which has been raised by CSEA in this case (Long Beach Community College District (2003) PERB Decision No. 1564), and the charging parties bear the burden of demonstrating that the charge is timely filed. (cf. Tehachapi Unified School District (1993) PERB Decision No. 1024; State of California (Department of Insurance) (1997) PERB Decision No. 1197-S.)

In this case, neither the charge as originally filed nor the First Amended Charge demonstrates that the allegations are timely filed, and the charge must be dismissed on this basis. In addition, even if timely, the information in the First Amended Charge does not cure the other deficiencies described by Mr. Thompson's earlier letter, and the charge must be dismissed for failure to state a prima facie case.

Therefore, I am dismissing the charge based on the facts and reasons set forth above as well as those contained in the July 1, 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

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

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 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.)

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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 

Les Chisholm
Regional Director

Attachment

cc: Christina C. Bleuler

PUBLIC EMPLOYMENT RELATIONS BOARD

Office of the General Counsel
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8381
Fax: (916) 327-6377



July 1, 2005

Angela M. Estacio
Juan A. Martinez
P.O. Box 363
Denair, CA 95316

Re: Angela M. Estacio & Juan A. Martinez v. California School Employees Association & its Chapter 007
Unfair Practice Charge No. SA-CO-503-E
WARNING LETTER

Dear Ms. Estacio and Mr. Martinez:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on March 28, 2005. Angela M. Estacio & Juan A. Martinez allege that the California School Employees Association & its Chapter 007 violated the Educational Employment Relations Act (EERA)¹ by failing to comply with its duty of fair representation.

Ms. Estacio

Ms. Estacio was terminated on April 6, 2004 after having worked as a District bus driver for approximately seven years.² In April 2001, Ms. Estacio was reprimanded for unsafe backing of her bus which caused an accident with another school bus. In October 2001, she was suspended for two days without pay for unspecified misconduct. In April 2002, she received a written reprimand regarding an incident during which she refused to perform duties assigned to her.

On June 24, 2003, Ms. Estacio filed a grievance against her supervisors Alice Quayle, Supervisor of Transportation and Kathryn Powell, Dispatch Supervisor alleging harassment, unfair treatment and a violation of the agreement provision regarding assignment of summer routes. The grievance asserted that assignment of the new route was vindictive on the two supervisors' parts and punishment for Ms. Estacio's earlier questions regarding the route assignments.

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 Some of the information contained in this letter was obtained during the investigation of CSEA v. Modesto City School District, unfair practice charge number SA-CE-2248-E and Angela Estacio v. Modesto City School District, unfair practice charge number SA-CE-2291-E.

Ms. Estacio had spoken to Linda Norman, CSEA Labor Relations Representative about the grievance. Ms. Norman stated that the grievance did not have merit because Ms. Estacio had been offered the route by the District and she rejected the assignment and accepted a different route. Subsequently a less senior driver accepted the first route. During the summer that route had an increase in hours which prompted Ms. Estacio to request assignment to the route. The District denied her request.

On July 16, 2003, Becky Meredith, Director of Planning and Research, met with Ms. Norman and Ms. Estacio. Mrs. Meredith requested more time to research the issue and Ms. Norman agreed. On July 21, they met again with Alice Quayle, Supervisor of Transportation. Management asserted that Ms. Estacio was a bad employee but did not address why an assignment was given to Bonnie Mellor, CSEA job steward, an employee with less seniority than Ms. Estacio. After the July 16 meeting, Mrs. Meredith and Ms. Quayle began soliciting statements from employees that Ms. Estacio was a threat. Employees who would benefit monetarily or through favoritism submitted such statements.

On July 22, 2003, Mrs. Meredith denied the grievance. Ms. Meredith asserted that "I can find no basis, other than the Department's need to efficiently accommodate student transportation, that stops were added to summer route #66." As to Ms. Estacio's allegation that she was working fewer hours than lower seniority drivers who were given routes which she could have accepted, Ms. Meredith replied that "your supervisors attempted to accommodate your concerns by assigning you summer route #66 after you voiced your displeasure at driving route #9."

On August 15, Mr. Mello, Associate Superintendent for Personnel Services, denied the grievance. On August 27, 2003, CSEA requested the grievance be advanced to Step III, arbitration, but indicated that CSEA would not represent Ms. Estacio in the arbitration. Ms. Estacio requested that CSEA appeal the denial to arbitration. The request was denied by the Chapter Executive Board. Ms. Estacio then appealed their decision under Policy 606 to the State CSEA Board. CSEA Director of Field Operations Steve Fraga presented the case to the State Board. The request was denied in October 2003.

The District school buses are equipped with cameras and VCRs to record conduct on the buses. After some problems, the District limited access to the recorded tapes to certain employees. Ms. Estacio was given a time limit in which to observe a video tape from her bus. No one else had a time limit. On August 15, 2003, Ms. Estacio asked her husband, a mechanic, to remove a videotape from a bus without authorization from a supervisor as required by written policy. When confronted, she admitted that she had tapes improperly removed several times prior.

On August 15, 2003, she completed her pre-driving inspection without reporting any damages to her bus. However later that day the bus had a 12 inch dent in its side. Katie Powell, Dispatcher/Supervisor, directed Ms. Estacio to fill out an accident report. Despite several requests to provide a written statement regarding the damage required by district policy, she took more than 25 days to provide such a statement.

On August 20, 2003, Mr. Mello ended a meeting with Ms. Meredith, Ms. Estacio, and Ms. Norman after Ms. Estacio continued efforts to discuss her grievance in spite of Mr. Mello advising her that the purpose of the meeting was not to discuss her grievance but rather to address the other drivers' perceptions of Ms. Estacio's displays of anger. Mr. Mello would not accept a package of witness statements refuting management's theory that Ms. Estacio was a threat to other employees.

On September 2, 2003, Ms. Estacio reported 1/4 hour of overtime which she did not work. Between September 2 and September 18, 2003, Ms. Estacio reported 10 occasions of overtime although she had been told previously not to work overtime. On September 5, 2003, Ms. Quayle rode along with Ms. Estacio during her morning route. Her need to work overtime to complete her bus route was inconsistent with the time required by substitute drivers to complete her route. On September 18, 2003, Ms. Powell accompanied Ms. Estacio on her bus route and noted that she drove well under safe posted speed limits and made unnecessary stops. Although the morning and afternoon routes ran late, only one change was suggested. However, it was never incorporated into the route.

Ms. Estacio was placed on paid administrative leave on September 19, 2003. The District memorandum stated that there were concerns that needed to be investigated such as her failures to drive in a safe manner, report an accident, comply with Transportation guidelines, work in a cooperative manner with other employees, her unprofessional conduct directed at District employees and threatening and/or taking retaliatory action against the other employees. The letter advised her that she was to be available at home and that she was not to contact anyone at work during the work day.

On September 23, 2003, Ms. Estacio contacted Ms. Powell advising her that she was going to visit her sister in the hospital and that she could be reached by cell phone. Ms. Meredith asked for verification from her sister's physician that would explain the necessity of Ms. Estacio visiting the hospital. Ms. Estacio did not respond to the request, nor did she respond to two subsequent letters. Mr. Norman advised Ms. Estacio that she did not have to be confined to her home during the administrative leave. On October 14, 2003, CSEA representative Linda Norman, acting on behalf of Ms. Estacio, sent a letter to the District refusing to provide the information and disputing the District's right to even ask for this information. The District never received an explanation.

On October 15, Ms. Estacio and Ms. Norman attended an investigatory meeting with Mr. Mello. Ms. Norman had prepared Ms. Estacio prior to the meeting.

Mr. Mello via letter of November 10 advised Ms. Estacio that he would recommend to the Modesto City School's Board of Education that she be dismissed as a classified employee from the District. On November 19, 2003, Ms. Estacio was notified that the Board had received the recommendation that she be dismissed.

A disciplinary hearing was held before an ALJ and lasted four days. Ms. Estacio was represented by Ms. Norman and Labor Relations Representative James Britton. Ms. Estacio's

request to be represented by an attorney was denied by CSEA as these cases are normally presented by Labor Relations Representatives. Ms. Norman had a list of approximately 20 witnesses. Ms. Estacio had a list of approximately 60 witnesses.

In March 2004, after an evidentiary hearing before Administrative Law Judge Leonard Scott, a proposed decision was issued which sustained the termination of Ms. Estacio and denied her appeal of the same. All the witnesses who testified on behalf of the District received special treatment or monetary compensation. The findings were that Ms. Estacio was involved in a number of instances which subjected her to discipline: she removed a videotape from the bus which she operated without the required authorization from her supervisor, she failed to report damage to her bus which must have occurred while the bus was in her possession, and when her supervisor, Kathryn Powell directed her to make a statement, Ms. Estacio failed and refused to provide the required written statement in a timely manner. Ms. Estacio also falsely claimed overtime hours which she had not earned because she did not have the prior approval required. On April 6, 2004, the District Board of Trustees upheld ALJ Scott's decision and terminated Ms. Estacio.

On June 25, 2004, the California School Employees Association filed an unfair practice charge alleging that Ms. Estacio had been unlawfully terminated.³ The charge was amended on November 12, 2004. On November 29, 2004 the undersigned issued a dismissal letter in that case. CSEA did not appeal the dismissal. On December 17, 2004, PERB denied Ms. Estacio's attempts to file an appeal or request an extension of time.

Ms. Estacio had an Unemployment Insurance Hearing on August 4, 2004 to appeal the District's denial of her application for unemployment benefits. Mr. Norman attended the hearing and assisted Ms. Estacio but did not represent her because the hearing officer limited participation to one individual and Ms. Estacio elected to represent herself.

This charge was filed on March 28, 2005. On April 12, 2005, CSEA responded to the charge.

Mr. Martinez

In February 2004 Mr. Martinez filed an administrative complaint against Supervisors of Transportation Katie Powell and Alice Quayle.⁴ The complaint concerned the unfair treatment of Ms. Estacio. On March 10, Mr. Martinez met with Mr. Mello, Ms. Norman, and Ms. Meredith. During the meeting Mr. Mello asked Mr. Martinez why he hadn't followed the chain of command, discussing the issue first with his supervisor. Mr. Mello declared the complaint invalid, told Mr. Martinez to only make complaints through the union and threatened Mr. Martinez with a slander lawsuit.

Mr. Martinez met with Ms. Norman after the meeting and Ms. Norman returned immediately to Mr. Mello's office to meet regarding an insurance information request.

³ Unfair practice charge number SA-CE-2248-E.

⁴ All dates occurred in 2004 unless otherwise noted.

Mr. Martinez, Ms. Norman, and Mr. Mello met on March 17 regarding the complaint. Mr. Martinez failed to provide any specifics to support his general allegations. Ms. Norman urged Mr. Martinez to provide specific information to help the District correct the issues. Mr. Martinez informed Mr. Mello that the meeting was futile. Eventually, the complaint was dismissed.

Mr. Martinez took seven days of sick leave in late May. The collective bargaining agreement between CSEA and the Modesto City School District allows the District to require employees to provide medical verification for absences that the District suspects are inappropriate. He failed to provide the District with verification for two of the days and was placed on administrative leave for a few days to obtain the medical verifications.

At unspecified dates after the March 17 meeting, management began to refuse Mr. Martinez's doctor notes and placed Mr. Martinez on paid administrative leave. Because Ms. Norman was on vacation at the time, Mr. Martinez was represented by the CSEA Chapter President Ken Oxley.

Mr. Martinez was instructed to remain at home. Ms. Norman did not challenge the administrative leave decision or the requirement that Mr. Martinez was required to supply additional documents as proof of illness. Ms. Norman sent e-mails to Mr. Martinez in June asking him to contact her, however, Mr. Martinez did not respond. Ms. Norman asked Mr. Martinez in person why he had not contacted her and he replied that he had been too busy with school. She asked him to give her copies of the District papers he had received but he did not do so.

On July 28, Mr. Martinez asked Ms. Norman to recuse herself from his case. The matter was referred to River Delta Field Office Director Rose Roach and Director of Field Operations Steve Fraga who declined to remove Ms. Norman from the case.

Mr. Martinez was absent from work without leave for a number of days. The District sent him a letter on July 1, indicating that unless he contacted the District within five days, the District would consider him to have abandoned his job. District Associate Superintendent for Human Resources Chris Flesuras told Mr. Martinez on July 13, that he would not terminate him, but that he would forego summer work based on his failure to report. Mr. Flesuras sent Mr. Martinez a letter on July 26 that assured him that he would be employed in his regular 10 month position beginning on August 26, but reminded him that he must provide doctor's notes for his previous absences prior to that time.

Mr. Martinez met with Ms. Norman on August 5, and provided her copies of the District's July 13 and 26 letters. He failed to provide copies of his doctor's notes although he had previously promised Ms. Norman that he would bring them to the meeting. On August 6, Ms. Norman requested the document by certified letter to Mr. Martinez. On August 12, Mr. Flesuras informed Ms. Norman by electronic mail that the Turlock School District had offered Mr. Martinez a bus driver position. On August 24, Mr. Flesuras informed Ms. Norman that Mr.

Martinez had accepted the job with Turlock but had not resigned from the Modesto City School District and had not provided the doctor's notes as requested.

Mr. Martinez did not report for work with the other drivers on August 26. The District intended to terminate him for abandonment of his job. Ms. Norman met with Mr. Martinez and Mr. Flesuras on August 27.

On August 27, 2004, Mr. Martinez signed a document of resignation including a waiver or release of all claims against the District. Ms. Norman informed him that this was standard language. The document also included provisions that required the District to remove all prior disciplinary actions from his personnel file and pay him an amount equal to four weeks of summer service.

Discussion

Ms. Estacio and Mr. Martinez assert that CSEA failed to comply with its duty to fairly represent them in their employment with the District.

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.]

With regard to when "mere negligence" might constitute arbitrary conduct, the Board observed in Coalition of University Employees (Buxton) (2003) PERB Decision No. 1517-H that, under federal precedent, a union's negligence breaches the duty of fair representation "in cases in which the individual interest at stake is strong and the union's failure to perform a ministerial act completely extinguishes the employee's right to pursue his claim." (Quoting Dutrisac v. Caterpillar Tractor Co. (9th Cir. 1983) 749 F.2d 1270 [113 LRRM 3532], at p. 1274; see also, Robesky v. Quantas Empire Airways Limited (9th Cir. 1978) 573 F.2d 1082 [98 LRRM 2090].)

Based on the information provided in the charge and gathered during the investigation, this charge does not state a prima facie violation of the EERA for the following reasons.

Estacio June 24, 2003 grievance

CSEA representative Norman initially indicated that this grievance did not have merit because Ms. Estacio have been offered the route in question and chose to reject the route. Ms. Norman met twice with Ms. Estacio and District representatives in an effort to resolve the grievance. After the District denied the grievance, CSEA preserved Ms. Estacio's right to proceed to arbitration but indicated that it would not represent Ms. Estacio in the arbitration. Ms. Estacio appealed CSEA's decision to the Chapter Executive Board and the State CSEA Board. The appeals were denied, the last one in October 2003.

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 statute of limitations is an affirmative defense which has been raised by the respondent in this case. (Long Beach Community College District (2003) PERB Decision No. 1564.) Therefore, charging party now bears the burden of demonstrating that the charge is timely filed. (cf. Tehachapi Unified School District (1993) PERB Decision No. 1024; State of California (Department of Insurance) (1997) PERB Decision No. 1197-S.)

This allegation is untimely because the statute of limitations began to run with the denial in October 2003 and the charge was not filed until March 28, 2005.

Estacio Termination

Ms. Norman accompanied Ms. Estacio to an investigatory meeting with the District on October 15, 2003. Ms. Norman and Mr. Britton represented Ms. Estacio at her termination hearing before ALJ Scott in February 2004 although Ms. Estacio had requested an attorney. Ms. Norman called fewer witnesses to testify than Ms. Estacio had requested. The District

accepted the ALJ's determination to uphold the termination. CSEA filed an unfair practice with PERB to challenge the termination. The charge was dismissed on November 29, 2004 and CSEA did not appeal.

With respect to CSEA's conduct at the February 2004 hearing, this allegation is untimely because it occurred more than 6 months prior to the filing of the charge. Even if the allegation was timely filed, Ms. Estacio is not entitled to a representative of her choosing. Rather, the exclusive representative determines who will represent her. (American Federation of Teachers College Guild, Local 1521 (Saxton) (1995) PERB Decision No. 1109.)

With respect to CSEA's conduct in pursuing the unfair practice charge, the duty of fair representation does not apply to the pursuit of claims in a noncontractual administrative forum such as PERB. (California School Employees Association (DeLauer) (2003) PERB Decision No. 1523.) Therefore CSEA's refusal to appeal the dismissal is not a violation of the duty of fair representation.

Mr. Martinez's February 2004 complaint

Ms. Norman represented Mr. Martinez in two meetings with the District regarding his complaint of unfair treatment. When Ms. Norman requested that he provide specific information, Mr. Martinez declared the process futile and the complaint was eventually dismissed. These events occurred more than six months prior to the filing of this charge and are therefore untimely. Even if the allegations were timely, there is nothing in the charge that demonstrates Ms. Norman's conduct was arbitrary, discriminatory or in bad faith. Therefore this allegation must be dismissed.

Mr. Martinez's administrative leave and resignation

Ms. Norman and Mr. Oxley represented Mr. Martinez regarding the District's decision to place him on administrative leave. Ms. Norman contacted Mr. Martinez by e-mail and in person during the summer of 2004. During this same period River Delta Field Office Director Rose Roach and Director of Field Operations Steve Fraga reviewed and denied Mr. Martinez's request to remove Ms. Norman from the case. Ms. Norman met with Mr. Martinez and District representatives on August 27, 2004. As a result of this meeting, Mr. Martinez resigned from District employment and received pay equivalent to four weeks of summer service. These events occurred more than six months prior to the filing of this charge and are therefore untimely.

Even if the allegations were timely, there is nothing in the charge that demonstrates that Ms. Norman's or the other Association representative's conduct was arbitrary, discriminatory or in bad faith. Therefore this allegation must be dismissed.

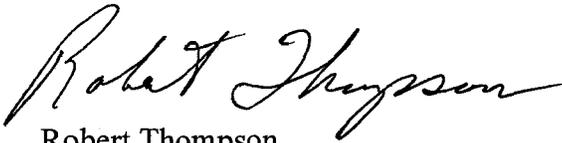
For these reasons the charge, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, please amend the charge. The amended charge should be prepared on a

July 1, 2005

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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 July 15, 2005, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

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

Robert Thompson
General Counsel