

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



ANNETTE M. DEGLOW,

Charging Party,

v.

LOS RIOS COLLEGE FEDERATION OF  
TEACHERS, LOCAL 2279,

Respondent.

Case Nos. SA-CO-424-E  
SA-CO-426-E

PERB Decision No. 1990

November 26, 2008

Appearances: The Law Offices of Robb Hewitt by Robb Hewitt, Attorney, for Annette M. Deglow; The Law Offices of Robert J. Bezemek by Robert J. Bezemek, Attorney, for Los Rios College Federation of Teachers, Local 2279.

Before Neuwald, Chair; McKeag and Rystrom, Members.

DECISION

McKEAG, Member: These cases come before the Public Employment Relations Board (PERB or Board) on appeal by Annette M. Deglow (Deglow) of a proposed decision (attached) by an administrative law judge (ALJ) dismissing PERB Case Nos. SA-CO-424-E and SA-CO-426-E. The charges in both cases alleged the Los Rios College Federation of Teachers, Local 2279 (Federation) violated the Educational Employment Relations Act (EERA)<sup>1</sup> by breaching its duty of fair representation. In addition, the charges alleged the Federation interfered with Deglow's exercise of rights when it refused to submit her grievances to arbitration, challenging the Los Rios Community College District's (District) performance evaluations of Deglow. Last, the charges alleged the Federation aided and abetted the

<sup>1</sup>EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

District's violation of Deglow's rights. Deglow contends this conduct constituted violations of EERA sections 3544.9, 3543.6(b) and 3543.6(a), respectively.

Relying on the Board's decision in State of California (Department of Corrections) (2006) PERB Decision 1806-S, the ALJ dismissed both cases for lack of prosecution. Deglow appealed.<sup>2</sup>

We have reviewed the entire record in this case and find the matter was properly dismissed for lack of prosecution. Accordingly, the Board hereby affirms the ALJ's dismissal of both cases and adopts the proposed decision as a decision of the Board itself.

#### ORDER

The unfair practice charges in Case Nos. SA-CO-424-E and SA-CO-426-E are hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chair Neuwald and Member Rystrom joined in this Decision.

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<sup>2</sup>Deglow filed a request for oral argument with her exceptions to the proposed decision. However, the Board typically denies requests for oral argument when there is an adequate record, the parties had sufficient opportunity to prepare briefs supporting their positions and availed themselves of that opportunity, and the issue before the Board is sufficiently clear to make oral argument unnecessary. (United Teachers of Los Angeles (Valadez, et al.) (2001) PERB Decision No. 1453; Monterey County Office of Education (1991) PERB Decision No. 913.) These criteria are met in this case. Therefore, we hereby deny Deglow's request for oral argument.

STATE OF CALIFORNIA  
PUBLIC EMPLOYMENT RELATIONS BOARD



ANNETTE M DEGLOW,

v.

LOS RIOS COLLEGE FEDERATION OF  
TEACHERS, LOCAL 2279,

Respondent.

UNFAIR PRACTICE  
CASES NO. SA-CO-424-E  
SA-CO-426-E

PROPOSED DECISION  
MAY 17, 2007

Appearances: Law Offices of Robb Hewitt, by Robb Hewitt, Attorney, for Annette M. Deglow; Law Offices of Robert J. Bezemek, by Martin Fassler, Attorney, for the Los Rios College Federation of Teachers, Local 2279.

Before Bernard McMonigle, Chief Administrative Law Judge.

PROCEDURAL HISTORY

In these cases, an employee alleges that a union violated its duty of fair representation when it refused to submit a grievance on her behalf and refused to pursue another grievance to arbitration.

Annete M. Deglow (Deglow) filed these unfair practice charges against the Los Rios College Federation of Teachers, Local 2279 (LRCFT or Federation) in December 1998 and January 1999. In June 1999, the Office of the General Counsel (General Counsel) of the Public Employment Relations Board (PERB) issued complaints in both cases alleging that the Federation violated its duty of fair representation to Deglow. Partial dismissals also issued in both cases.

In July 1999, Deglow filed appeals of both partial dismissals with the Board itself.

On July 30, 1999, a PERB Board agent held an informal settlement conference for both of these matters, but the cases were not settled.

On September 29, 1999 the Board issued four decisions upholding Board agent dismissals and partial dismissals in unfair practice charges filed by Deglow, including the partial dismissals in these matters (Los Rios College Federation of Teachers/CFT/AFT/Local 2279 (Deglow) (1999) PERB Decision No. 1350 and Los Rios College Federation of Teachers/CFT/AFT/Local 2279 (Deglow) (1999) PERB Decision No. 1351.)

In May of 2006, the matters were assigned to this administrative law judge for formal hearing.

On January 23, 2007, the Federation filed a letter requesting that the cases be dismissed pursuant to State of California (Department of Corrections) (2006) PERB Decision No. 1806-S. On January 26, an Order To Show Cause (OSC) why the case should not be dismissed for lack of prosecution issued in both matters. On March 23, 2007, Deglow filed a Response and Opposition to the OSC. Several factual allegations therein were disputed by the Federation. A hearing was held on April 24, 2007. After closing oral arguments the matter was submitted.

#### FINDINGS OF FACT

The official PERB files in these matters contain no entries from September 1999 to December 2005. On December 20, 2005, a notice of appearance was filed stating that Deglow would be represented by an attorney, Robb Hewitt. A letter received by the General Counsel on May 17, 2006, from the Federation reflects the General Counsel's attempt to establish mutually acceptable dates for a formal hearing for both cases. The letter provided September 2006 dates that the Federation could be available.

At the hearing, Deglow testified that she was present at the settlement conference regarding both of these matters in July 1999. Also present were Robert Perrone (Perrone), the Executive Director of LRCFT and PERB Deputy General Counsel Robert

Thompson (Thompson). No settlement was reached. According to Deglow, there was an agreement to continue the settlement conference and not set the matter for formal hearing. However, on cross examination she could not recall whether Perrone had agreed to a continuance.

On August 22, 1999, Deglow faxed a letter referencing the two cases to Perrone requesting “that arrangement be made for me to meet with Dennis Smith, President, LRCFT to discuss settlement terms and conditions for the above referenced cases.”

By letter of August 26, 1999, Smith declined the request and directed Deglow to contact the LRCFT Grievance Chair or Perrone as they were handling the cases. He also urged her to contact Thompson whose services as an impartial facilitator remained available. There was no further contact between the parties regarding these cases for over six years.

Deglow testified that later, after a public PERB meeting in 1999, she was told by Thompson that there exists no “timeline” for settling her cases, that they were “in settlement.”

Thompson testified that he recalled conducting a settlement conference in a case that involved Deglow and LRCFT but wasn't sure that it involved the cases at issue. He could not recall an agreement to continue the settlement conference. However, he did recall that later he had a conversation with Deglow in which she indicated that she was dealing with the LRCFT on other matters and did not wish to proceed to another settlement conference at that time. After Deglow asked, Thompson told her that there was no problem in putting it off.

In 2005, Thompson contacted Deglow and inquired into the status of the two cases in this matter. She told Thompson that she was looking into legal representation. Deglow testified that Thompson again told her that there were no “timelines”. In December 2005, Deglow called Thompson and said that he would hear from her attorney. In that same month Thompson received a notice of appearance identifying Deglow's attorney.

## ISSUE

Should the complaint in this matter be dismissed for lack of prosecution from July 1999 to December 2005?

## CONCLUSIONS OF LAW

In State of California (Department of Corrections) (2006) PERB Decision No. 1806-S (Corrections), the Board affirmed the obligation of a charging party to exercise due diligence in prosecuting their unfair practice claim. Therein, the Board also determined that an ALJ can dismiss a complaint for failure to exercise due diligence in moving the case forward to a formal hearing, absent a showing of good cause. Such power is inherent in the authority to regulate the course and conduct of a hearing (PERB Regulation 32170.)

In that case, as in this one, there were no defined time requirements for proceeding to a formal hearing. Neither the governing statute or PERB regulations set forth a "timeline".<sup>1</sup> However, the Board determined that the charging party's "[f]ailure to take any action for eighteen months [was] not due diligence." In addition, good cause for the delay was absent "[b]ecause [charging party] failed to demonstrate reasons that were either unanticipated or beyond his control."

Deglow allowed her cases to remain dormant for 6 ½ years before attempting to revive them. Accordingly, I find that she did not exercise due diligence in prosecuting them. The issue here is whether Deglow has established reasons for the delay that demonstrate good cause. I find that she has not.

Initially, Deglow contends that there was an agreement to continue the informal settlement conference. However, she does not recall that the other party to this matter (LRCFT) was part of that agreement. Nor could the PERB agent, Thompson, recall such an

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<sup>1</sup> A prior PERB regulation, repealed in 1989, required that a formal hearing be requested within six months from the date a complaint issued.

agreement. He did recall a later conversation (in 1999) in which Deglow stated that she did not wish to proceed with the cases at that time. Even assuming there had been an understanding that the parties would continue to consider settlement, and that Thompson's services remained available, there is no evidence of an "agreement" that would justify the time lag. Nor would such an understanding survive a reasonable time for settlement.

Deglow next argues that she had a right to rely on Thompson's assurance that PERB did not have "timelines" for proceeding to a formal hearing. As discussed, PERB regulations set no time limits for an unfair practice charge to proceed from complaint to formal hearing<sup>2</sup>. However, as the Board found in Corrections, even without official timelines or time limits, a charging party must prosecute a case before PERB in a reasonable period of time. It is not the responsibility of PERB agents to remind or cajole. It is not the duty of a respondent to push a matter charging it with a violation of law. After a failed settlement effort, the charging party must use due diligence to proceed to a formal hearing before an administrative law judge.

That the charging party must move an unfair practice complaint to a formal hearing is inherent in the PERB processes. Here, charging party is no stranger to those processes. As the Board has noted, "PERB's decision index lists 15 Board decisions involving Deglow's charges against the Federation, the majority of which affirm dismissals by Board agents. In several of these decisions, the Board has advised Deglow that her repeated filings of the same charges over the same circumstances constitute an abuse of process." Los Rios College Federation of Teachers, Local 2279 (Deglow) (2003) PERB Decision No. 1515.

For these cases to proceed to a formal hearing would constitute another form of abuse of process. One supposed advantage of processing unfair labor practices through PERB is a

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<sup>2</sup> As Thompson testified, each case is "driven by the parties." Settlement depends on a variety of factors that differ with each case.

faster disposition of these controversies than would otherwise be available. The six month statutory limitations period for filing an unfair practice charge obviously reflects legislative intent that there be a rapid resolution. Permitting a charging party to file within the statutory time limitation and fail to prosecute for over six years would be contrary to the purpose of the limitations period.

Because due diligence was not exercised in prosecuting these cases and good cause to excuse the delay has not been established, these cases are dismissed for lack of prosecution.

#### PROPOSED ORDER

Based on the foregoing findings of fact, conclusions of law and the entire record, the complaints and underlying unfair practice charges in Case No. SA-CO-424- E, Annette M. Deglow v. Los Rios College Federation of Teachers, Local 2279 and Case No. SA-CO-426-E Annette M. Deglow v. Los Rios College Federation of Teachers, Local 2279 are hereby dismissed.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Public Employment Relations Board (PERB or Board) itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board  
Attention: Appeals Assistant  
1031 18th Street  
Sacramento, CA 95814-4174  
(916) 322-8231  
FAX: (916) 327-7960

In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code Regs., tit. 8, sec. 32300.)



A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, secs. 32135(a) and 32130; see also Government Code sec. 11020(a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of California Code of Regulations, title 8, section 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. (Cal. Code Regs., tit. 8, sec. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, secs. 32300, 32305, 32140, and 32135(c).)

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Bernard McMonigle  
Chief Administrative Law Judge