

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**



JOHN BUSSMAN,

Charging Party,

v.

CALIFORNIA TEACHERS ASSOCIATION,

Respondent.

Case No. LA-CO-1330-E

PERB Decision No. 2047

June 30, 2009

Appearances: John Bussman, on his own behalf; John F. Kohn, Attorney, for California Teachers Association.

Before Dowdin Calvillo, Acting Chair; McKeag and Wesley, Members.

DECISION

WESLEY, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by John Bussman (Bussman) of a Board agent's dismissal of his unfair practice charge. The charge alleged that the California Teachers Association (CTA) breached the duty of fair representation in violation of the Educational Employment Relations Act (EERA)¹ by failing to represent Bussman in a challenge to the legality of certain pay provisions negotiated in the contract between the Alvord Educator's Association (AEA) and Bussman's employer, the Alvord Unified School District (District).

The Board has reviewed the dismissal and the record in light of Bussman's appeal, CTA's response and the relevant law. Based on this review, the Board affirms the dismissal of the charge for the reasons discussed below.

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

BACKGROUND

Bussman has been employed by the District as a high school history/government teacher since 2001. AEA is the exclusive representative of the District's certificated employees. CTA is an independent organization affiliated with AEA.

In 2006, AEA and the District initiated negotiations for a successor collective bargaining agreement. In the fall of 2006, Bussman began to express concerns to AEA representatives that proposed provisions in the new contract regarding salary were unfair and potentially illegal under the California Education Code.

Bussman's charge identified several communications from October 2006 through August 2007, between himself and AEA complaining about pay disparity and the allegedly illegal contract provisions. Among the ongoing communications between Bussman and AEA was a January 2007 request by Bussman that AEA represent him in challenging these provisions. AEA promptly denied the request. Thereafter, Bussman requested representation from CTA.

In March 2007, AEA informed bargaining unit employees that the parties had reached a tentative contract.

In a March 16, 2007 meeting, Bussman again raised concerns about violations of the Education Code and other contract inequities, but was shouted down by AEA representatives.

On March 21, 2007, Bussman was initially denied access to a union site meeting. After admitting him to the meeting, however, AEA representatives angrily demanded that he leave. Bussman refused and remained at the meeting. Subsequently, in March and April 2007, Bussman learned that AEA representatives had made disparaging remarks about him to other employees and to District officials.

Following the March 21 meeting, CTA advised AEA that certain contract provisions were illegal.

In May 2007, Bussman met with CTA legal counsel Marianne Reinhold (Reinhold). Reinhold later advised Bussman that a lawsuit regarding the illegal pay issues would be filed on behalf of Bussman and other impacted teachers.

On June 19, 2007, CTA informed Bussman that it was waiting for approval to proceed with legal assistance.

Bussman attempted to reach Reinhold between June and August 2007, but she failed to respond.

On August 10, 2007, Bussman received a copy of a letter from AEA to the District, requesting that the District meet to fix the contract.

On September 12, 2007, Bussman sent a fax to CTA making additional demands that CTA immediately file a lawsuit on his behalf. CTA responded that they declined to do so.

BUSSMAN'S APPEAL

On appeal, Bussman repeats the facts and arguments alleged in his charge that a duty of fair representation is owed to him by CTA. The appeal emphasizes arguments made primarily in the amended charge that CTA had at one point promised to provide representation, that this promise created a duty of fair representation, and that failure to proceed was a violation of EERA.

DISCUSSION

EERA imposes upon an exclusive representative a duty to fairly represent all bargaining unit members in matters involving contract negotiations, administration of the collective bargaining agreement and grievances. (*Fremont Unified School District Teachers Association, CTA/NEA (King)* (1980) PERB Decision No. 125; *United Teachers of Los Angeles (Collins)* (1982) PERB Decision No. 258.) Under EERA, AEA has been designated as the exclusive representative of the District's certificated employees. However, Bussman's charge was not

filed against the exclusive representative, AEA.² Rather, Bussman specifically charged CTA with violating the duty of fair representation by failing to represent him in challenging the illegal provisions of the collective bargaining agreement after AEA refused to provide such representation. While CTA is an affiliate of AEA, CTA is not the exclusive representative of the certificated employees and it has no independent obligation under EERA to represent bargaining unit employees. (*California Teachers Association and Oakland Education Association (Welch)* (2006) PERB Decision No. 1850; *California Teachers Association, CTA/NEA (Torres)* (2000) PERB Decision No. 1386.) Because EERA does not impose a duty of fair representation on CTA, CTA did not violate a duty of fair representation when it declined to represent Bussman.

ORDER

The unfair practice charge in Case No. LA-CO-1330-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Acting Chair Dowdin Calvillo and Member McKeag joined in this Decision.

² Bussman filed a separate charge against AEA in unfair practice charge Case No. LA-CO-1329-E.