STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

MARITZA HAYEK, ET AL., Charging Parties, v. BALDWIN PARK EDUCATION ASSOCIATION, Respondent.	Case No. LA-CO-1438-E PERB Decision No. 2223 November 30, 2011

Appearance: Maritza Hayek, on her own behalf.

Before Martinez, Chair; McKeag and Dowdin Calvillo, Members.

DECISION

MARTINEZ, Chair: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by Maritza Hayek (Hayek) of a Board agent's dismissal (attached) of Hayek's unfair practice charge. The charge alleged that the Baldwin Park Education Association (BPEA) violated the Educational Employment Relations Act (EERA)[1] by failing to enforce contract terms relating to the salary schedule and the Health Benefits Committee and by failing to negotiate a more favorable fringe benefits package. The charge alleged that this conduct constituted a violation of EERA section 3543.6.[2] The Board agent dismissed the charge for failure to state a prima facie breach of the duty of fair representation.

[1] EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

[2] EERA section 3543.6(b) provides that:

> It shall be unlawful for an employee organization to:
>
> (b) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or

We have reviewed the entire record in this matter. Based on this review and applying the relevant law, the Board finds the Board agent's warning and dismissal letters to be well-reasoned, adequately supported by the record and in accordance with the applicable law. Accordingly, the Board adopts the warning and dismissal letters as the decision of the Board itself, supplemented by the brief discussion below.

DISCUSSION

The appeal raises two issues worth brief mention. First, Hayek supports her argument that BPEA acted in a discriminatory manner by referring generally to a state law that prohibits discrimination by unions on the basis of marital status or age. Hayek quotes this state law in full in her amended charge without citing to its source. The state law upon which Hayek relies is section 12940, which enumerates unlawful employment practices. This law is administered and enforced by the Department of Fair Employment and Housing. PERB has no jurisdiction over such matters. PERB's jurisdiction under EERA section 3543.6, subdivision (b) is limited, in pertinent part, to discrimination that occurs not because of an employee's age or marital status but because of an employee's exercise of rights under the collective bargaining statute.

The appeal also contains factual allegations and documents that were not presented to the Board agent. PERB Regulation 32635(b)[3] provides: "Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence." (*Los Banos Unified School District* (2009) PERB Decision No. 2063 [new evidence on appeal not considered where charging party was aware of such evidence prior to filing the charge and there was no demonstration of good cause].) The purpose of this regulation

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otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

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

> is to require the charging party to present its allegations and supporting evidence to the Board agent in the first instance, so that the Board agent can fully investigate the charge prior to deciding whether to issue a complaint or dismiss the case.

(*South San Francisco Unified School District* (1990) PERB Decision No. 830.)

Hayek states that it was her understanding that she would provide her additional information to the Board when her case was heard. The Board agent's warning letter, however, advised Hayek that the charge did not state a prima facie case and invited her to amend the charge and provide additional facts to correct any factual inaccuracies in the warning letter. If Hayek had additional information, it was incumbent on her to provide it to the Board agent at the charge processing stage, as stated in the warning letter, so that the Board agent could have fully investigated the charge before deciding whether to issue a complaint or dismiss the case. As Hayek has not shown good cause for presenting on appeal her new allegations and supporting evidence, they are not considered here.

Moreover, even were we to consider Hayek's new allegations and supporting evidence, we would not alter our conclusion that Hayek has not met her burden of establishing a prima facie breach of the duty of fair representation. Hayek included in the appeal a comparison of composite rate and tiered rate costs for bargaining unit members who are single, which demonstrates that members who are single pay more under a composite rate than they would under a tiered rate. Hayek also included statements from seven members describing the financial hardship they have experienced since implementation of the current health benefits design. In addition, Hayek included the following exhibits: a chart showing a percentage breakdown of the membership into singles, couples and families; member health benefit surveys; documentation regarding employer contributions, insurance rates and premium costs; and e-mails from members documenting financial hardship.

Hayek's new allegations and supporting evidence do not aid Hayek in establishing a prima facie breach of the duty of fair representation. Hayek is correct that none of the Board decisions cited in the dismissal letter involve the precise issue of whether a union breaches its duty of fair representation when it negotiates for a composite rate based health care design that places a disproportionate burden on members who are single. While the facts of the prior decisions may vary, the basic principles do not. As the Board agent explained, a union's duty of fair representation requires it to refrain from representing its members "arbitrarily, discriminatorily, or in bad faith." (*Rocklin Teachers Professional Association (Romero)* (1980) PERB Decision No. 124; *Redland Teachers Association (Faeth and McCarty)* (1978) PERB Decision No. 72.) Although the duty of fair representation includes a union's negotiating conduct, as a general rule, an exclusive representative enjoys a wide range of bargaining latitude. As the United States Supreme Court stated in *Ford Motor Co. v. Huffman* (1953) 345 U.S. 330, 338 (*Ford Motor*):

> Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.

The mere fact that an agreement reached by an employee organization has an unfavorable effect on some members is not sufficient to demonstrate a violation. (*California School Employees Association (Chacon)* (1995) PERB Decision No. 1108.) The question is whether the employee organization exercised its discretion in good faith and with honesty of purpose. (*Ford Motor* at p. 338.) Here, the factual allegations do not establish that BPEA acted otherwise.

ORDER

The unfair practice charge in Case No. LA-CO-1438-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members McKeag and Dowdin Calvillo joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
700 N. Central Ave., Suite 200
Glendale, CA 91203-3219
Telephone: (818) 551-2804
Fax: (818) 551-2820

January 19, 2011

Maritza Hayek
15443 Midcrest Drive
Whittier, CA 90604

Re: *Maritza Hayek et al. v. Baldwin Park Education Association*
Unfair Practice Charge No. LA-CO-1438-E
DISMISSAL LETTER

Dear Ms. Hayek:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on June 21, 2010 by Maritza Hayek (Hayek). On June 28, 2010, Hayek amended the unfair practice charge to include Auretta Ruth Alexander, Rodolpho Figueroa, Gerald Honadle, Annette Licata, Polly Mahurin, Cariann S. Nagamine, Andrew Persad, Lynn Reck, and Grace Scura as Charging Parties to the case. On July 15, 2010, the charge was again amended to add Norma M. Castro, Virginia Lizette Escobar, and Tammy Smith as Charging Parties to the case. All of the signatories to the unfair practice charge will be referred to collectively as "Charging Parties." Charging Parties allege that the Baldwin Park Education Association (Union or Respondent) violated section 3543.6(b) of the Educational Employment Relations Act (EERA or Act)[1] by breaching the duty of fair representation.

Charging Party was informed in the attached Warning Letter dated January 3, 2011, 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 that 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 January 12, 2011, the charge would be dismissed. On January 11, 2011, you filed an amended charge.

In the January 3, 2011 Warning Letter, Charging Parties were informed that they did not establish that the Union breached the duty of fair representation by failing to enforce the terms of the May 12, 2006 Tentative Agreement. Charging Parties have not included any more information regarding this allegation in the amended charge. Therefore, PERB will consider

[1] EERA is codified at Government Code section 3540 et seq. PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of the EERA and PERB Regulations may be found at www.perb.ca.gov.

this allegation to be withdrawn by the Charging Parties and the allegation will not be addressed further in this letter.[2]

The thrust of Charging Parties' claim against the Union is that the Union negotiated a health benefits package with the Baldwin Park Unified School District (District) that adversely affected unit members that were either unmarried or over 40 years-old. As explained in the January 3, 2011 Warning Letter, the duty of fair representation extends to a union's negotiating conduct. (*Service Employees International Union Local 250 (Stewart)* (2004) PERB Decision No. 1610-M.) However, unions are afforded a wide range of discretion in bargaining conduct and unions are not expected to satisfy the interests of all members. (*Ibid.*; *California School Employees Association and its Chapter 107 (Chacon)* (1995) PERB Decision No. 1108.) Accordingly, PERB has found no breach of the duty of fair representation (i.e., that a union did not engage in arbitrary, discriminatory, or bad faith conduct) simply because a negotiated agreement adversely affects some members or because some members are not satisfied with the terms of that agreement. (*Service Employees International Union Local 250 (Stewart)*, *supra*, PERB Decision No. 1610-M; *Los Rios College Federation of Teachers, CFT/AFT (Violett, et al.)* (1991) PERB Decision No. 889.)

In this case, Charging Parties continue to allege that the Union breached the duty of fair representation by failing to negotiate a favorable benefits package. Charging Parties allege than unmarried unit members are required to pay premiums for their health benefits that are higher than the actual insurance costs while unit members with families pay lower premiums. However, as explained in the January 3, 2011 Warning Letter, Charging Parties do not allege how any of them were affected, positively or negatively, by this agreement. The amended charge does not include the marital status or age of any of the Charging Parties. Thus, there is insufficient information to conclude that the Union breached the duty to represent Charging Parties fairly and equally.[3]

Moreover, as explained above, the mere fact that Charging Parties are not satisfied with the health benefits agreement is not sufficient to demonstrate arbitrary, discriminatory, or bad faith conduct. (*Service Employees International Union Local 250 (Stewart)*, *supra*, PERB Decision No. 1610-M; *Los Rios College Federation of Teachers, CFT/AFT (Violett, et al.)*, *supra*, PERB Decision No. 889.) A charging party must, at a minimum, demonstrate that "the exclusive representative's action or inaction was without a rational basis or devoid of honest judgment." *Reed District Teachers Association, CTA/NEA (Reyes)* (1983) PERB Decision No. 332, quoting *Rocklin Teachers Professional Association (Romero)* (1980) PERB Decision No. 124.)

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[2] To the extent that Charging Parties did not intent to withdraw this allegation, it is dismissed for the reasons specified in the January 3, 2011 Warning Letter.

[3] To the extent that Charging Parties are alleging a violation on behalf of employees that are not named as parties to this unfair practice charge, Charging Parties lack standing to do so. (*IBEW Local 1245 (Tacke)* (2006) PERB Decision No. 1857-M ["an employee has no standing to challenge a violation of another employee's rights"].)

Charging Parties allege that the negotiated health benefits package adversely affects approximately 28 percent of the bargaining unit. However, this is not sufficient to demonstrate a breach of the duty of fair representation. Other than this alleged disparate impact, Charging Parties have not provided facts establishing that the Union's conduct was "without a rational basis or was devoid of honest judgment." (*Reed District Teachers Association, CTA/NEA (Reyes)*, *supra*, PERB Decision No. 332, quoting *Rocklin Teachers Professional Association (Romero)*, *supra*, PERB Decision No. 124.)[4]

Right to Appeal

Pursuant to PERB Regulations,[5] Charging Party 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. (Cal. Code Regs, tit. 8, § 32635, subd. (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 during a regular PERB business day. (Cal. Code Regs, tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (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 PERB 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. (Cal. Code Regs, tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

The Board's address is:

[4] Charging Parties also appear to contend that the Union breached the duty of fair representation by agreeing with the District to use "Interest Based Problem Solving," to negotiate the health benefits agreement, but then failing to do so. However, Charging Parties do not demonstrate that the Union has failed to use "Interest Based Problem Solving" in its negotiations with the District. As explained in the January 3, 2011 Warning Letter, mere conclusory statements are not sufficient to demonstrate a violation. (*United Teachers-Los Angeles (Ragsdale)* (1992) PERB Decision No. 944.) In addition, as already explained above, Charging Parties have not established that the Union's negotiating conduct breached the duty of fair representation.

[5] PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(916) 322-8231
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. (Cal. Code Regs, tit. 8, § 32635, subd. (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 Cal. Code Regs., tit. 8, § 32140 for the required contents.) The document will be considered properly "served" when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs, tit. 8, § 32135, subd. (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. (Cal. Code Regs, tit. 8, § 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,

WENDI L. ROSS
Interim General Counsel

By _____
Eric J. Cu
Regional Attorney

Attachment

cc: Robert E. Lindquist

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
700 N. Central Ave., Suite 200
Glendale, CA 91203-3219
Telephone: (818) 551-2804
Fax: (818) 551-2820

January 3, 2011

Maritza Hayek

Re: *Maritza Hayek et al. v. Baldwin Park Education Association*
Unfair Practice Charge No. LA-CO-1438-E
WARNING LETTER

Dear Ms. Hayek:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on June 21, 2010 by Maritza Hayek (Hayek). On June 28, 2010, Hayek amended the unfair practice charge to include Auretta Ruth Alexander, Rodolpho Figueroa, Gerald Honadle, Annette Licata, Polly Mahurin, Cariann S. Nagamine, Andrew Persad, Lynn Reck, and Grace Scura as Charging Parties to the case. On July 15, 2010, the charge was again amended to add Norma M. Castro, Virginia Lizette Escobar, and Tammy Smith as Charging Parties to the case. All of the signatories to the unfair practice charge will be referred to collectively as "Charging Parties." Charging Parties allege that the Baldwin Park Education Association (Union or Respondent) violated section 3543.6(b) of the Educational Employment Relations Act (EERA or Act)[1] by breaching the duty of fair representation.

Charging Parties are employed at the Baldwin Park Unified School District (District) as certificated teachers. The Union is the exclusive representative of the certificated bargaining unit at the District. The Union and the District are parties to a Collective Bargaining Agreement (CBA) that is in effect from July 1, 2008 through June 30, 2011. The CBA provides for the establishment of a Fringe Benefits Committee (FBC) to serve in an advisory capacity on issues relating to employee benefits. The Union has two representatives on the FBC as do other bargaining units at the District.

Charging Parties draw attention to the following language of the CBA, pertaining to the FBC:

> The Association shall have two members on the fringe benefit committee, which will meet on an ongoing basis throughout the year. The benefit package selection shall be determined using Interest Based Problem Solving.

[1] EERA is codified at Government Code section 3540 et seq. PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of the EERA and PERB Regulations may be found at www.perb.ca.gov.

On May 12, 2006, the Union and the District reached a Tentative Agreement (TA) on issues relating to unit member benefits. Under the TA, unit members no longer received cash back as part of the District's benefits package and the District would move to a composite rate insurance plan. In addition, employees contributed funds to a trust for the purpose of managing healthcare costs and the salary scale for unit members would increase so that level "E12" will be twice the amount that of level "A1." On or around June 1, 2006, the members ratified the TA via a ratification vote. However, unit members at the E12 level of the salary schedule did not receive twice the compensation of unit members in level A1 of the salary schedule.

According to the Union, on June 7, 2007 the Union and the District reached another TA on, among other issues, a four percent increase to the certificated employees' salary schedule. Again, according to the Union, the Union and the District entered into a new CBA effective July 1, 2008.

Discussion:

Charging Parties allege that the Union denied Charging Parties 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.

(*Reed District Teachers Association, CTA/NEA (Reyes)* (1983) PERB Decision No. 332, p. 9, quoting *Rocklin Teachers Professional Association (Romero)* (1980) PERB Decision No. 124; emphasis in original.)

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, at p. 1274; see also, *Robesky v. Quantas Empire Airways Limited* (9th Cir. 1978) 573 F.2d 1082.)

1. Failure to Enforce the May 12, 2006 Tentative Agreement

In the present case, Charging Parties allege that the Union fails to enforce the May 12, 2006 TA. Charging Parties allege that level E12 of the salary schedule was not twice the amount of level A1 of the salary schedule. PERB Regulation 32615(a)(5) requires, inter alia, that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." The Charging Parties' burden includes alleging the "who, what, when, where and how" of an unfair practice. (*State of California (Department of Food and Agriculture)* (1994) PERB Decision No. 1071-S, citing *United Teachers-Los Angeles (Ragsdale)* (1992) PERB Decision No. 944.) Mere legal conclusions are not sufficient to state a prima facie case. (*Ibid.*; *Charter Oak Unified School District* (1991) PERB Decision No. 873.)

The Charging Parties' burden also includes alleging facts showing that the unfair practice charge was timely filed; i.e., that the alleged unfair practice occurred no more than six months prior to the filing of the charge. (*Los Angeles Unified School District* (2007) PERB Decision No. 1929; *City of Santa Barbara* (2004) PERB Decision No. 1628-M.) PERB is prohibited 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. (*Coachella Valley Mosquito and Vector Control District v. Public Employment Relations Board* (2005) 35 Cal.4th 1072.) 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.)

In this case, Charging Parties filed the original unfair practice charge on June 21, 2010. This means that the statutory limitations period extends back until December 21, 2009. Any allegations of wrongdoing by the Union occurring prior to December 21, 2009 are therefore untimely unless an exception to the statute of limitations applies. To the extent that Charging Parties allege that the Union failed to enforce the terms of the May 12, 2006 TA at times prior to December 21, 2009, Charging Parties do not establish that these allegations are timely filed. To the extent that Charging Parties allege that the Union failed to enforce the terms of the May

12, 2006 TA at times within the statutory limitations period, there is insufficient information to demonstrate a violation for the reasons that follow.[2]

Charging Parties do not provide sufficient information regarding the current salary schedule to determine whether a violation occurred. The Union included in its position statement copies of a later TA dated June 7, 2007 as well as excerpts of the successor CBA, effective July 1, 2008. Each of these documents contains different salary terms from what was agreed to in the May 12, 2006 TA and appear to, by their terms, supersede the May 12, 2006 TA. Thus, Charging Parties do not establish that, at any point within the statute of limitations period, the Union was obligated to enforce the terms of the May 12, 2006 TA.[3]

Even if the Union was obligated to enforce the terms of the May 12, 2006 TA, Charging Parties do not allege that any Charging Party requested that the Union enforce this agreement. For example, Charging Parties do not allege that any of them requested that the Union pursue a grievance or other contract-enforcement mechanism on their behalf. In *California State Employees Association (Sandberg)* (2004) PERB Decision No. 1694-S, the Board found no breach of the duty of fair representation where the charging party did not provide sufficient details about the manner in which he requested assistance from the union. The Board reasoned that, without information pertaining to the charging party's request, the Board could not determine whether the union's actions were arbitrary, discriminatory, or made in bad faith. (*Ibid.*) Similarly in this case, Charging Parties do not demonstrate that the Union was aware that Charging Parties sought enforcement of the May 12, 2006 TA. Thus, PERB is unable to conclude that the Union's conduct was arbitrary, discriminatory, or made in bad faith. (See *Ibid.*)

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[2] Therefore, Charging Parties do not establish that any exception to the statute of limitations period is present. According to the continuing violation doctrine, "a violation within the statute of limitations period may 'revive' an earlier violation of the same type that occurred outside of the limitations period." (*Trustees of the California State University (Kyrias)* (2009) PERB Decision No. 2038-H; *Compton Community College District* (1991) PERB Decision No. 915.) The violation within the statute of limitations period must, however, constitute an independent violation without reference to the earlier violations. (*Trustees of the California State University (Kyrias)*, *supra*, PERB Decision No. 2038-H, citing *North Orange County Community College District* (1999) PERB Decision No. 1342.) In this case, because Charging Parties have not demonstrated the existence of an independent, similar violation occurring within the statute of limitationsperiod, the exception does not apply.

[3] Charging Parties have not yet filed a reply to the Union's position statement. To the extent that Charging Parties dispute the existence of the terms of either the June 7, 2007 TA or the July 1, 2008 successor CBA, Charging Parties should consider amending the charge to include the factual basis for its dispute. (*Service Employees International Union #790 (Adza)* (2004) PERB Decision No. 1632-M [Board agent may rely on undisputed facts provided by a respondent].)

2. Failure to Enforce Provisions of the CBA Relating to the Fringe Benefits Committee

Charging Parties also allege that the Union failed to enforce provisions of the CBA relating to the FBC. Charging Parties cite to the following language of the CBA:

> The Association shall have two members on the fringe benefit committee, which will meet on an ongoing basis throughout the year. The benefit package selection shall be determined using Interest Based Problem Solving.

It is not immediately clear which portions of this language Charging Parties contend is at issue in this case. Charging Parties include the minutes of multiple FBC meetings. In the minutes, the FBC appears to have met on a regular basis with two Union representatives present each meeting. Thus, while not entirely clear, it appears as though Charging Parties contend that the Union has failed to enforce the portion of this language pertaining to having the committee select a benefits package using the Interest Based Problem Solving process. Assuming that this is the nature of Charging Parties' allegations against the Union, there is insufficient information to find a breach of the duty of fair representation.

As explained above, Charging Parties bear the burden of providing a "clear and concise statement of facts" supporting its claims. (PERB Regulation 32615(a)(5).) Charging Parties must demonstrate how the Union's "action or inaction was without a rational basis or devoid of honest judgment." (*Reed District Teachers Association, CTA/NEA (Reyes)*, *supra*, PERB Decision No. 332.) In this case, Charging Parties do not provide any facts supporting its conclusion that the Union has failed to enforce this provision of the CBA. Moreover, a review of the minutes does not reveal that the Union's actions on the FBC are "without a rational basis or devoid of honest reason." (*Ibid.*) As explained above, mere legal conclusions are not sufficient to demonstrate a violation. (*United Teachers-Los Angeles (Ragsdale)*, *supra*, PERB Decision No. 944.)

3. Failure to Negotiate a Favorable Benefits Package

Charging Parties also allege that the Union breached the duty of fair representation negotiating a benefits structure without performing adequate research. Although the duty of fair representation includes a union's negotiating conduct, as a general rule, an exclusive representative enjoys a wide range of bargaining latitude. (*Service Employees International Union Local 250 (Stewart)* (2004) PERB Decision No. 1610-M (*Stewart*).) As the United States Supreme Court stated in *Ford Motor Co. v. Huffman* (1953) 345 U.S. 330, 338:

> Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A

> wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to good faith and honesty of purpose in the exercise of its discretion.

Acknowledging the need for such discretion, PERB determined that an exclusive representative is not expected or required to satisfy all members of the unit it represents. (*California School Employees Association (Chacon)* (1995) PERB Decision No. 1108; *Stewart*, *supra*, PERB Decision No. 1610-M.) Moreover, the duty of fair representation does not mean an employee organization is barred from making an agreement which may have an unfavorable effect on some members, nor is an employee organization obligated to bargain a particular item benefiting certain unit members. (*Ibid.*; *Los Rios College Federation of Teachers (Violett)* (1991) PERB Decision No. 889.) The mere fact that a charging party was not satisfied with the agreement is insufficient to demonstrate a prima facie violation. (*Los Rios College Federation of Teachers (Violett)*, *supra*, PERB Decision No. 889; *Stewart*, *supra*, PERB Decision No. 1610-M.) In addition, the decision not to go to the impasse process is within a union's bargaining discretion. (*Redland Teachers Association (Faeth and McCarty)* (1978) PERB Decision No. 72.) Even poor judgment during negotiations is not sufficient to breach the duty of fair representation. (*California School Employees Association and its Chapter 107 (Chacon)*, *supra*, PERB Decision No. 1108.)

In this case, Charging Parties do not allege that the negotiated benefits plan adversely affects any of them. Even if this were the case, the mere fact that an agreement has an unfavorable effect on some members is not sufficient to demonstrate a violation. (*California School Employees Association (Chacon)*, *supra*, PERB Decision No. 1108; *Stewart*, *supra*, PERB Decision No. 1610-M.) Charging Parties do not provide facts demonstrating that the Union's conduct was arbitrary, discriminatory, or made in bad faith. (*United Teachers of Los Angeles (Collins)*, *supra*, PERB Decision No. 258.) Therefore, Charging Parties do not demonstrate that the Union breached the duty of fair representation.

For these reasons the charge, as presently written, does not state a prima facie case.[4] If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, Charging Parties may 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 an authorized agent of Charging Parties. The amended charge must have the case

[4] In *Eastside Union School District* (1984) PERB Decision No. 466, the Board explained that a prima facie case is established where the Board agent is able to make "a determination that the facts as alleged in the charge state a legal cause of action and that the charging party is capable of providing admissible evidence in support of the allegations. Consequently, where the investigation results in receipt of conflicting allegations of fact or contrary theories of law, fair proceedings, if not due process, demand that a complaint be issued and the matter be sent to formal hearing." (*Ibid.*)

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 an amended charge or withdrawal is not filed on or before January 12, 2011,[5] PERB will dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Eric J. Cu
Regional Attorney

EC

[5] A document is "filed" on the date the document is **actually received** by PERB, including if transmitted via facsimile. (PERB Regulation 32135.)