

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



YOULANDA WILLIAMS,

Charging Party,

v.

CALIFORNIA SCHOOL EMPLOYEES  
ASSOCIATION,

Respondent.

Case No. LA-CO-1694-E

PERB Decision No. 2643

May 17, 2019

Appearances: Youlanda Williams, on her own behalf; Sonja J. Woodward, Attorney, for California School Employees Association.

Before Banks, Shiners, and Krantz, Members.

DECISION

SHINERS, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions by Youlanda Williams (Williams) to the proposed decision of an administrative law judge (ALJ). The complaint alleged that California School Employees Association (CSEA) breached its duty of fair representation under the Educational Employment Relations Act (EERA)<sup>1</sup> by not filing a grievance on Williams' behalf and by failing to provide her with a reason for not filing the grievance. Following an evidentiary hearing, the ALJ dismissed the allegation that CSEA violated its duty of fair representation by not filing a grievance on Williams' behalf, finding that the requested grievance had no merit on its face. In contrast, the ALJ found that CSEA breached its duty to inform Williams of the reasons it would not act on her requested grievance. He therefore ordered CSEA to cease and

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

desist from breaching its duty to represent its members, provide a written explanation to Williams regarding its decision not to pursue her grievance, and post a notice of its violation.

Neither party filed exceptions to the merits of the proposed decision.<sup>2</sup> Williams, however, excepts to the proposed decision's failure to award "make whole" relief beyond a written explanation of CSEA's reasons for not pursuing her requested grievance.

The Board has reviewed the proposed decision, the entire record, and relevant legal authority in light of the parties' submissions. Based on this review, we conclude that the ALJ's proposed remedy is well-reasoned and consistent with applicable law, and thus affirm the proposed remedy as discussed below.

### FACTUAL BACKGROUND<sup>3</sup>

CSEA and its Lynwood Chapter 116 is the exclusive representative of classified employees in the Lynwood Unified School District (District), where Williams worked as a classified employee at various times relevant to this case. CSEA and the District are parties to a collective bargaining agreement (CBA) covering the period between July 1, 2016, and June 30, 2019. The CBA contains a grievance procedure that requires the initiation of a grievance "within twenty (20) working days of the time [the employee] had knowledge, or reasonabl[y] should have had knowledge of the act or omission giving rise to the grievance."

The District appointed Williams on March 19, 2013, as a part-time Special Education Instructional Assistant. On September 10, 2015, the District terminated Williams' employment

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<sup>2</sup> As a result, the merits of the proposed decision are final and binding only on the parties to this case. (PERB Regulations 32300, subd. (c), 32305, subd. (a); *County of Butte* (2016) PERB Decision No. 2492-M, p. 2, fn. 3.) PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

<sup>3</sup> These facts are taken from the proposed decision. As neither party excepted to the proposed decision's factual findings, these facts are undisputed.

on the ground that she did not get along with staff. After being notified of her termination, Williams was offered the opportunity to either work or take paid leave for the rest of the day. She elected to take paid vacation.

When Williams received her pay for her last day of work, it included only the one hour that she spent at the termination meeting and did not include pay for the five hours of vacation leave. Williams requested payment from the District's human resources department and, in an e-mail to CSEA labor representative Patricia Salas (Salas) dated September 17, 2015, requested that Salas secure the payment for her. In April 2016, seven months after her initial request, Williams finally received the payment for the vacation leave she used on the day she was terminated.

In May 2016, Williams requested that the District provide her with an opportunity to review her personnel file, as she believed there may have been something derogatory placed in her personnel file that could dissuade another employer from hiring her. Williams' request was not granted at that time.

That same month, after having picketed the school district and the school, Williams was invited to a meeting with District Assistant Superintendent Adrienne Konigar-Macklin (Konigar-Macklin). The meeting ultimately resulted in Williams' reinstatement pursuant to a Settlement Agreement and Mutual General Release (Agreement) between her and the District. The Agreement entitled her to backpay and other benefits.

On June 17, 2016, Williams sent an e-mail to Konigar-Macklin, stating that she should have received pay for the Thanksgiving and Christmas breaks as part of her backpay under the Agreement. On July 13, 2016, Williams sent an e-mail to the human resources department regarding the additional pay she felt she should have received under the Agreement.

On July 14, 2016, Williams had an appointment to review her personnel file, but when she arrived at the human resources department, she was told the review had to be postponed.

On July 15, 2016, Williams sent an e-mail to Salas requesting that CSEA file a grievance on her behalf regarding: (1) the District's refusal to allow her to review her personnel file; (2) docked time in 2015; (3) the eight month delay<sup>4</sup> in paying her for five hours vacation pay; and (4) the District's lack of civility. Williams received no response from CSEA.

When the District informed Williams that she could review her personnel file on July 19, 2016, Williams sent Salas another e-mail, dated July 16, 2016, regarding her earlier attempt to look at her file and requesting representation on July 19, 2016 at the District office. By this time, Salas had left CSEA and it is unclear whether anyone received that e-mail. Williams did, however, contact CSEA by phone to request someone to accompany her. She initially spoke with Chris Swanson, Field Director of CSEA, who told her it was short notice, but that she would refer the matter to labor representative Marie Alexandre (Alexandre). Alexandre called Williams on July 19, prior to her appointment to review her file. Alexandre told Williams she did not need anyone to accompany her; she advised her to look for anything derogatory in her file and to make copies, and to let her know if she found anything.

On July 19, 2016, Williams, accompanied by two people of her choosing (not from CSEA), reviewed her personnel file. She found nothing derogatory in her personnel file, so she did not contact CSEA regarding the contents of the file.

On July 22, 2016, Williams sent an e-mail to Alexandre "requesting a grievance to be processed regarding the issues being addressed." Alexandre e-mailed a response asking

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<sup>4</sup> During the hearing, Williams clarified that the delay was actually seven months.

Williams to identify which chapter she was from and informing her that Salas had resigned the previous month. Alexandre did not request clarification of Williams' e-mail to her. Williams responded by e-mail the same day, informed Alexandre that she was with Chapter 116, and inquired as to who would handle her grievance. Williams did not receive further communications from CSEA.

On September 6, 2016, Williams wrote another e-mail to Alexandre complaining that CSEA had not responded to her prior e-mail and again asking who would be responding to her grievance request.

On September 15, 2016, Williams filed her unfair practice charge alleging breach of the duty of fair representation by CSEA.

On October 5, 2016, Williams sent another follow up e-mail to Alexandre, indicating that she had not received a reply to the questions set forth in her July 22 e-mail. She received no reply.

On October 20, 2016, Williams sent an e-mail to Diane Hawkins (Hawkins), a CSEA job steward to whom she was referred by the then-Chapter president. This e-mail listed 12 issues arising out of the 2015-2016 school year that Williams wanted included in a grievance. Hawkins responded the next day, advising Williams she would mail her a grievance form.

On November 1, 2016, Williams sent an e-mail to Emily Rife (Rife), another CSEA labor representative she had met at a CSEA local chapter meeting and who had asked Williams for information regarding her situation. In the e-mail, Williams requested answers to questions put to Alexandre in prior e-mails, and advised Rife that Hawkins had her prior e-mail which had "everything that's needed for both grievances." Williams never heard back from Rife.

On November 10, 2016, Williams sent an e-mail to the new Chapter President Linda Vaughan, who had visited Williams that day at the Lugo Elementary School site where she was then working. Williams requested that CSEA file a grievance alleging wrongful termination, an alleged unjustified evaluation on September 10, 2015, an uncivil environment, and non-compliance with mandatory seven days' notice for a schedule change. In addition, she requested a grievance for "docked pay" in the current school year, and because she was denied or delayed in the viewing of her personnel file.

CSEA never filed any grievance(s) on Williams' behalf regarding the issues she raised in July 2016. None of CSEA's various representatives told Williams in their many communications with her that CSEA would not file a grievance on her behalf based on those issues, nor did they provide any reason for their inaction.

#### PROPOSED DECISION

The ALJ concluded that CSEA did not breach its duty of fair representation by failing to file a grievance in response to Williams' July 2016 requests to Salas and Alexandre to file a grievance on her behalf. The ALJ concluded that the grievance was meritless on its face because two allegations in the proposed grievance were untimely as more than 20 workdays had passed since the alleged violation, and the first and fourth allegations—the District's alleged refusal to allow Williams to review her personnel file and vague allegations that the District lacked civility—were not grievable under the CBA.

The ALJ nevertheless concluded that CSEA breached its duty by failing to provide Williams any explanation for why it would not file a grievance on her behalf, despite persistent follow-up communications from Williams. To remedy this violation, the ALJ ordered CSEA to cease and desist from failing to provide represented employees with an explanation for not

pursuing their grievances, provide a written explanation to Williams regarding its decision not to pursue her grievance, and post a notice of its violation. The ALJ correctly noted that a union provides a sufficient explanation if it communicates that an employee's case did not merit further action, but in this case there was no evidence the union had done so. (*United Faculty Association of North Orange County Community College District (Kiszely)* (1998) PERB Decision No. 1269, adopted dismissal letter at pp. 2 & 4.)

### DISCUSSION

In her single exception, Williams argues the ALJ's proposed remedy is inadequate, notwithstanding his order that CSEA "as part of a make whole remedy . . . provide Williams with a written explanation for its decision to not pursue her grievance." Although she does not specify what additional remedies she believes should have been ordered, Williams appears to contend that CSEA should be made to file the grievance on her behalf or, alternatively, to pay her an undefined monetary remedy. According to Williams, it would be unjust to withhold make whole relief from prevailing individuals before PERB and such relief is essential to deter CSEA from engaging in similar misconduct in the future.

Section 3541.5, subdivision (c), grants PERB "broad remedial powers to effectuate the purposes of the EERA." (*Children of Promise Preparatory Academy* (2018) PERB Decision No. 2558, p. 35.) This includes an award of monetary damages when such relief is necessary to place the injured party in the position it would have been in had the wrongful conduct not occurred, i.e., to make the injured party "whole." (*United Teachers Los Angeles (Raines, et al.)* (2016) PERB Decision No. 2475, pp. 91-94; *City of Pasadena* (2014) PERB Order No. Ad-406-M, pp. 13-14.) But "PERB does not presume damages on the part of employees, even where the representative has failed to adequately represent them." (*United Teachers Los*

*Angeles (Raines, et al.)*, *supra*, PERB Decision No. 2475, p. 91.) When the union has failed to fairly represent an employee in grievance processing, the employee is not entitled to make whole relief unless “the grievant would have prevailed if the grievance had been properly processed by the union.” (*United Teachers of Los Angeles (Valadez, et al.)* (2001) PERB Decision No. 1453, adopting proposed decision, p. 55, quoting *Iron Workers Local Union 377, Int’l Assn. of Bridge, Structural and Ornamental Iron Workers, AFL-CIO* (1998) 326 NLRB 375, 376-377 (*Iron Workers*); see also, *Amalgamated Transit Union, Local 1704 (Buck)* (2007) PERB Decision No. 1898-M, adopting proposed decision, p. 16.)<sup>5</sup>

In this case, the ALJ determined Williams’ requested grievance lacked merit on its face because the underlying allegations were either untimely or not covered by the contractual grievance procedures between the District and CSEA. Williams did not except to, and is thus bound by, this determination. Accordingly, there is no basis for the Board to conclude that Williams would have prevailed on her requested grievance, and consequently no basis for an award of monetary relief.

Additionally, the binding conclusion that the requested grievance lacked merit precludes a finding that CSEA’s failure to inform Williams of the reasons it would not act on her grievance request caused any harm beyond the lack of communication to which Williams was entitled. Under these circumstances, the ALJ’s order that CSEA provide Williams a

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<sup>5</sup> When a union is found to have breached its duty with respect to an arguably meritorious grievance, the typical remedy is an order that the union process the grievance through the contractual grievance machinery. (See *United Teachers of Los Angeles (Valadez, et al.)*, *supra*, PERB Decision No. 1453, p. 6 [ordering the union to process and make a good faith effort to resolve the charging party employee’s grievance].) If that process is not available or would be ineffectual under the circumstances, the charging party, to be entitled to make whole relief, must prove in compliance proceedings that he or she would have prevailed on a properly processed grievance. (*Iron Workers, supra*, 326 NLRB at pp. 379-380.)



written explanation for its inaction was sufficient to fully remedy the violation. The Board therefore declines to order any additional make whole remedies.

ORDER

Based upon the findings of fact and conclusions of law in the June 26, 2018 proposed decision, and the entire record in this case, it is found that the California School Employees Association (CSEA) violated the Educational Employment Relations Act, Government Code section 3543.6, subdivision (b), by failing to provide Youlanda Williams (Williams) with an explanation for not pursuing her requested grievance.

Pursuant to section 3541.5, subdivision (c), of the Government Code, it hereby is ORDERED that CSEA, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Failing to provide represented employees with an explanation for not pursuing their grievance.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE EERA:

1. Provide Williams with a written statement explaining why CSEA declined to pursue her requested grievance.

2. Within ten (10) workdays following the date this decision is no longer subject to appeal, post at all work locations where notices to employees represented by the CSEA's Lynwood Chapter 116 customarily are posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of CSEA, indicating that it will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. In addition to physical posting of paper notices, the Notice shall be posted by electronic message, intranet, internet site, and other electronic means

customarily used by CSEA to communicate with employees in the classified bargaining unit at the Lynwood Unified School District. Reasonable steps shall be taken to ensure that this Notice is not reduced in size, altered, defaced, or covered with any other material.

3. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board (PERB or Board), or the General Counsel's designee. CSEA shall provide reports, in writing, as directed by the General Counsel or his/her designee. All reports regarding compliance with this Order shall be concurrently served on Williams.

Members Banks and Krantz joined in this Decision.

**NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD  
An Agency of the State of California**



After a hearing in Unfair Practice Case No. LA-CO-1694-E, *Youlanda Williams v. California School Employees Association*, in which all parties had the right to participate, it has been found that California School Employees Association (CSEA) violated the Educational Employment Relations Act, Government Code section 3540 et seq., by failing to provide Youlanda Williams (Williams) with an explanation for not pursuing her requested grievance.

As a result of this conduct, we have been ordered to post this Notice and we will:

**A. CEASE AND DESIST FROM:**

1. Failing to provide represented employees with an explanation for not pursuing their grievance.

**B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE EERA:**

1. Provide Williams with a written statement explaining why CSEA declined to pursue her requested grievance.

Dated: \_\_\_\_\_

CALIFORNIA SCHOOL EMPLOYEES  
ASSOCIATION

By: \_\_\_\_\_  
Authorized Agent

**THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED WITH ANY OTHER MATERIAL.**