STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SHANNON BLAKE, Charging Party, v. CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION-CHAPTER 827, Respondent.	Case No. SA-CO-699-E PERB Decision No. 3053 August 26, 2026

Appearances: Freedom Foundation by Ravi Prasad, Attorney, for Shannon Blake; Alex Leenson, Staff Attorney, for California School Employees Association-Chapter 827.

Before Banks, Chair; Krantz and Paulson, Members.

DECISION

BANKS, Chair: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Charging Party Shannon Blake from dismissal of her unfair practice charge by PERB's Office of the General Counsel (OGC). At issue in the appeal is whether Blake alleged a prima facie case that Respondent California School Employees Association-Chapter 827 (CSEA) violated the Educational Employment Relations Act (EERA; Gov. Code, § 3540 et seq.) by breaching its duty of fair representation, or by discriminating or interfering with her protected rights. Specifically, Blake alleges that CSEA withheld union representation at a pre-disciplinary meeting because she was not a union member. For the following reasons, we affirm OGC's dismissal of Blake's charge.

FACTUAL ALLEGATIONS

Blake is employed by the Amador County Office of Education (Amador COE). Her position is in a bargaining unit exclusively represented by CSEA. Blake has elected not to join CSEA and accordingly does not pay union dues or fees of any kind.

Amador COE and CSEA are parties to a collective bargaining agreement (CBA) which has a term of July 1, 2024 to June 30, 2027. The CBA contains an article addressing the procedural due process Amador COE must provide to employees who face potential discipline. Article 26.5.1 of the CBA states:

> "A *Skelly* Meeting will be held prior to the imposition of any form of discipline as defined in 25.1. The *Skelly* Officer will be an administrator designated by the Superintendent/Designee who does not have knowledge of any of the facts that have led to the proposed discipline. At the *Skelly* Meeting, the bargaining unit member may be represented by a union representative. During the hearing the employee may provide additional evidence and or testimony that might exonerate them from the proposed discipline. The *Skelly* Officer may recommend upholding, amending, or dismissing the proposed discipline."[1]

On May 1, 2025, Blake e-mailed CSEA Chapter President Megan Mathison stating that she "was recently accused/allegations of inappropriate and/or

[1] *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194 requires that permanent civil service employees be given notice of significant proposed disciplinary action, the reasons for the action, a copy of the charges and the materials upon which they are based, and an opportunity to respond to the charges either orally or in writing before discipline is imposed. (*Id*. at p. 215.) A "*Skelly* hearing" refers to the employee's opportunity to respond to the charges and essentially results in a determination of whether there are reasonable grounds to believe the charges against the employee are true and support the proposed action. (*Cleveland Bd. of Educ. v. Loudermill* (1985) 470 U.S. 532, 545-546.)

unprofessional conduct." Blake further stated that as of May 1, Amador COE had put her on administrative leave.

In her response on the same day, Mathison asked Blake if Amador COE had interviewed her about the alleged inappropriate and/or unprofessional conduct. Mathison also wrote, "I can put you in touch with our labor rep, Sean Smith, but you would need to be a member for him to get involved." Blake responded later that day stating that she "would consider today's meeting an interview." She also wrote, "I guess I better become a member. Can you send me the information." That same afternoon, Mathison provided a link to the website where Blake could join CSEA.

In a May 3, 2025 e-mail, Blake asked Mathison, "So, I have to pay dues to be represented?" Mathison replied on May 4, writing: "Yes, representation is a member benefit."

Blake filed an unfair practice charge with PERB on October 30, 2025, alleging that CSEA discriminated and retaliated against her because she was not a dues-paying member of the union, that CSEA's refusal to represent her in disciplinary proceedings interfered with her rights under EERA, and that CSEA breached its duty of fair representation.

After reviewing Blake's charge and CSEA's response, OGC issued Blake a warning letter. The letter explained that the facts Blake alleged, if proven, would not establish that CSEA had retaliated or discriminated against her, breached its duty of fair representation, or otherwise violated EERA. The warning letter gave Blake an opportunity to amend her charge and thereby attempt to cure its deficiencies. When Blake did not file an amended charge, OGC dismissed the case. Blake appealed OGC's dismissal, and CSEA filed an opposition.

DISCUSSION

In resolving an appeal from a dismissal, we review OGC's determinations de novo. (*City and County of San Francisco* (2020) PERB Decision No. 2712-M, p. 2.) Here, we agree with OGC that Blake did not allege sufficient facts to state a prima facie case that CSEA had breached its duty of fair representation or otherwise violated EERA.

I. Duty of Fair Representation

No duty of fair representation is owed to a unit member unless the exclusive representative possesses the exclusive means by which an employee can obtain a particular remedy. (*California Union of Safety Employees (John)* (1994) PERB Decision No. 1064-S, p. 9 (*John*), citing *California Faculty Association (Pomerantsev)* (1988) PERB Decision No. 698-H; *San Francisco Classroom Teachers Association, CTA/NEA (Chestangue)* (1985) PERB Decision No. 544 (*Chestangue*).) For example, the Board found no violation where the union did not have exclusive access to the grievance process because the CBA provided that the union or an employee could file a contractual grievance. (*United Teachers Los Angeles (Le Mere)* (2018) PERB Decision No. 2581, p. 3 [no duty of fair representation where employee is able to proceed independently of the union].)

Similarly, the duty of fair representation does not extend to matters of employee discipline where the union lacks exclusive control over the means of redress. (*John*, *supra*, PERB Decision No. 1064-S, p. 9; cf. *Goldstein v. Professional Staff Congress/CUNY* (2d Cir. 2024) 96 F.4th 345, 351, cert. denied (2025) 145 S.Ct. 1044 [courts have not suggested that the duty of fair representation extends to those situations where employees are free to select their own representatives].) In *John*, the

Board held that the duty of fair representation does not apply to an exclusive representative which represents a bargaining unit member before the State Personnel Board (SPB) because that forum is not connected with any aspect of negotiation or administration of a collective bargaining agreement, and the exclusive representative does not exclusively control the means to the particular remedy. (*John*, *supra*, PERB Decision No. 1064-S, p. 9, citing *California State Employees Association (Parisi)* (1989) PERB Decision No. 733-S, p. 9.) The Board therefore determined that because the union had no obligation to represent the charging party before the SPB, the union did not violate its duty of fair representation when it refused to represent him in that forum.

Indeed, the Board has specifically held that a union does not have a duty to represent a unit member at a pre-disciplinary *Skelly* hearing. (*Contra Costa Community College District* (2019) PERB Decision No. 2652, p. 7; *Service Employees International Union, Local 1021 (Horan)* (2011) PERB Decision No. 2204-M, p. 9 (*Horan*); *Bay Area Air Quality Management District Employees Association (Mauriello)* (2006) PERB Decision No. 1808-M, adopting dismissal letter at p. 2.) In *Horan*, *supra*, PERB Decision No. 2204-M, consistent with its long-established principles, PERB found the union had no duty to represent the employee in the *Skelly* hearing process because the union did not possess exclusive control over the means to a particular remedy, and there was no factual showing that the employee was not allowed to represent himself or that the union prevented him from doing so. (*Id*. at pp. 9-10.)

Here, CSEA did not owe Blake a duty of fair representation because CSEA does not have exclusive control over the *Skelly* process nor the procedural due process that Amador COE is required to provide during pre-disciplinary investigations.

Blake has not alleged facts showing that she was not allowed to represent herself during the pre-disciplinary investigation or *Skelly* process, nor that CSEA prevented her from doing so.

Blake's assertion that Article 26.5.1 of the CBA somehow created a duty of fair representation in *Skelly* hearings is unsupported by the text of that article. Article 26.5.1 states, in relevant part, that "[a]t the *Skelly* Meeting, the bargaining unit member *may* be represented by a union representative." (Emphasis added.) In that provision the word "may" is clearly permissive—nowhere does the provision state that CSEA "must" or "shall" represent a unit member at a *Skelly* meeting. Nor does the CBA contain any other language that suggests that CSEA participation is a requirement. Rather, the CBA provides that the employer cannot prevent a bargaining-unit member from having a union representative at their *Skelly* hearing—a right that is already inherent in the case law and in the statutory rights of an exclusive employee representative—but the CBA lacks *any* language that would indicate the union is obliged to provide a representative. Blake's interpretation is unsupported by the text of the CBA, and she offers no contextual or extrinsic evidence to suggest that the text is ambiguous or that it imposed a duty for CSEA to represent employees in *Skelly* hearings.

II. Discrimination and Interference

In evaluating a discrimination or retaliation claim, PERB generally applies the same test irrespective of whether the respondent is an employer or a union. (*San Jose/Evergreen Federation of Teachers, AFT Local 6157, and American Federation of Teachers, AFL-CIO (Crawford et al.)* (2020) PERB Decision No. 2744, p. 16 (*Crawford*).) In order to establish a prima facie case, a charging party must allege

facts showing that: (1) one or more employees engaged in activity protected by a labor relations statute that PERB enforces; (2) the respondent had knowledge of such protected activity; (3) the respondent took adverse action against one or more employees; and (4) the respondent took the adverse action "because of" the protected activity, which PERB interprets to mean that the protected activity was a substantial or motivating cause of the adverse action. (*Id*. at pp. 16-17; *City and County of San Francisco*, *supra*, PERB Decision No. 2712-M, p. 15.) If the charging party establishes these factors, certain fact patterns nonetheless allow a respondent to prove, by a preponderance of the evidence, that it would have taken the same action even absent the protected activity. (*Crawford*, *supra*, PERB Decision No. 2744, p. 17.) Additionally, in an unfair practice charge alleging that a union discriminated or retaliated against protected activity, the charging party must allege facts showing that the union's conduct impacted the employer-employee relationship. (*Ibid*.)

EERA section 3543 guarantees employees the right to refuse to join or participate in the activities of an employee organization. The Legislature has long recognized the financial burden the duty of fair representation places upon exclusive representatives and, for that reason, the right to not participate in a union is not absolute. (*San Francisco Federation of Teachers, Local 61, CFT/AFL-CIO (Hagopian)* (1982) PERB Decision No. 222, p. 6 (*Hagopian*).) Thus, a union may lawfully deny representation to nonmembers in matters where the union lacks exclusive control of the process at issue. (*Berkeley Federation of Teachers, Local 1078, AFL-CIO (Moore)* (1988) PERB Decision No. 658, adopting warning letter, p. 3 (*Berkeley Federation*).)

Unlike the facts in Blake's case, in *Hagopian*, *supra*, PERB Decision No. 222, the union had the <u>exclusive</u> right over the procedure at issue—the right to appeal to

arbitration the decision of the superintendent or their designee. (*Id*. at p. 8.) There, despite the fact that the union exclusively controlled the means of redress, the union charged nonmembers for representation in arbitration proceedings. (*Id*. at p. 3.) The Board held that where the exclusive representative had the exclusive right to appeal a grievance to arbitration, conditioning nonmembers' representation in the grievance procedure unlawfully discriminates, interferes with, restrains and coerces nonmembers in the exercise of their EERA section 3543 rights. (*Id*. at p. 7.) Here, by contrast, CSEA did not control the exclusive means for Blake to access a *Skelly* hearing. For this reason, Blake did not state a prima facie case that CSEA discriminated against her based on her non-member status. (Cf. *Hagopian* at p. 8 [arbitration procedure must apply equally to members and nonmembers alike].) An exclusive representative may, however, extend representation to its members in matters outside of its exclusive control "as a benefit of membership." *(Chestangue*, *supra*, PERB Decision No. 544, adopting July 18, 1985 warning letter at p. 3 [Education Code proceedings]; *Berkeley Federation*, *supra*, PERB Decision No. 658, adopting warning letter at p. 3 [same].)

Blake is correct that EERA section 3543 protects the right of public employees to refrain from union membership and dues payments. However, she has not alleged sufficient facts that, if proven, would establish that CSEA took any adverse, discriminatory action that impacted her employment relationship with Amador COE, nor that CSEA interfered with rights protected under EERA. Blake's allegation fails because her right to a pre-deprivation hearing, and to pre-disciplinary due process, exist separate and apart from the CBA or CSEA's obligations as the exclusive representative. Neither CSEA representatives nor the CBA itself waived or diminished

Blake's right to participate in pre-disciplinary processes. Rather, as contemplated in *Chestangue* and *Berkeley Federation*, CSEA has determined that representation at *Skelly* hearings will be provided by the organization as a benefit of membership, consistent with PERB precedent allowing unions to provide membership-only benefits when they do not possess exclusive control over the process. However, in so doing, CSEA did not deprive Blake of access to a *Skelly* hearing nor any other due process protections that Amador COE was obliged to provide. Indeed, Amador COE remained responsible for providing due process regardless of the union's role.

Blake's charge fails to state a prima facie case that CSEA's conduct was discriminatory or constituted interference. Nor does Blake state a prima facie case that CSEA violated its duty of fair representation.

ORDER

The unfair practice charge in Case No. SA-CO-699-E is DISMISSED WITHOUT LEAVE TO AMEND.

Members Krantz and Paulson joined in this Decision.