

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



WILLIAM E. HARMENING,)	
)	
Charging Party,)	Case No. S-CO-110
)	
v.)	PERB Decision No. 442
)	
CALIFORNIA SCHOOL EMPLOYEES)	November 29, 1984
ASSOCIATION, CHAPTER 318,)	
)	
Respondent.)	
)	

Appearance: Mocine, Plotz & Eggleston by Mary H. Mocine,
Attorney for William E. Harmening.

Before Hesse, Chairperson; Jaeger and Morgenstern, Members.*

DECISION

This case is before the Public Employment Relations Board on an appeal by William E. Harmening of the Board agent's dismissal, attached hereto, of his charge alleging that the California School Employees Association, Chapter 318 violated sections 3543.6(b) and 3543 of the Educational Employment Relations Act (Government Code section 3540 et seq.).

We have reviewed the dismissal and, finding it free from prejudicial error,¹ adopt it as the Decision of the Board itself.

¹The regional attorney's dismissal letter erroneously states that the charging party alleged violations of section 3543.6(a) and (c). No such charges were made.

*Members Tovar and Burt did not participate in this Decision.

ORDER

The unfair practice charge in Case No. S-CO-110 is
DISMISSED WITHOUT LEAVE TO AMEND.

By the BOARD

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, California 94108
(415) 557-1350



June 15, 1984

Mary H. Mocine
Mocine, Plotz & Eggleston
1440 Broadway, Suite 1000
Oakland, CA 94612

Louis Saenz
California School Employees
Association Chapter 318
P. O. Box 640
San Jose, CA 95106

Re: REFUSAL TO ISSUE COMPLAINT AND DISMISSAL OF UNFAIR PRACTICE CHARGE
William E. Harmening v. California School Employees Association
Chapter 318, Charge No. S-CO-110

Dear Parties:

Pursuant to Public Employment Relations Board (PERB) Regulation section 32620(5), a complaint will not be issued in the above-referenced case and the pending charge is hereby dismissed because it fails to allege facts sufficient to state a prima facie violation of the Educational Employment Relations Act (EERA).¹ The reasoning which underlies this decision follows.

On June 7, 1984, William E. Harmening, charging party, filed an unfair practice charge against the California School Employees Association Chapter 318 (Association) alleging violation of EERA section 3543.6(b). More specifically, charging party alleged that on March 28, 1984 he was recalled from his position as president of the Association's Stockton chapter, that the procedure followed was rife with defects, and that the result was unfair because at least 25 nonmembers voted at the meeting.

Examination and investigation of the above-referenced charge revealed the following. Charging party was elected president of the Association's Stockton chapter on November 30, 1983. On March 26, 1984, at approximately 3:00 p.m., charging party was notified of an intent on the part of certain Association members to hold a recall election two days later at the next regularly scheduled chapter meeting. On March 27, 1984, notice of the recall election was distributed among classified employees. Charging party contends that the notice was not distributed to all employees. On March 28, 1984, the

¹References to the EERA are to Government Code sections 3540 et seq. PERB Regulations are codified at California Administrative Code, Title 8.

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regularly-scheduled meeting was opened by charging party as president. The Association asserts that approximately 165 employees were present when charging party was elected president, and approximately 177 unit members attended the recall meeting. The recall procedure was initiated and the accusations against charging party were read. Charging party stated that he had not been provided sufficient time within which to prepare a response and that he would prefer to respond in writing. He then agreed to answer orally each of the separate charges against him. A voice vote was held, and it was concluded, by a representative of state CSEA who was conducting the meeting, that more than the required three-fourth of the members present had voted in favor of the recall.

Harmening's wife (also an employee) challenged the results on the ground that more than 25 voters were not members of the Association. A committee was formed to investigate that allegation, and ultimately the approximately 25 nonmembers were given an opportunity to become members that evening. There is no indication that such persons paid the initiation fee and regular dues which Charging Party asserts to be a precondition of membership under Article 2, section 1 of the chapter's constitution and bylaws (see Exh. "A").

Charging party has alleged that the Association denied him the right to fair representation guaranteed by section 3544.9, and thereby violated sections 3543.6(a) and (c). The fair representation duty imposed on the exclusive representative extends to contract negotiations (Redlands Teachers Association (Faeth) (9/24/78) PERB Decision No. 72; SEIU, Local 99 (Kimmitt) (10/19/79) PERB Decision No. 106; Rocklin Teachers Professional Association (Romero) (3/26/80) PERB Decision No. 124; El Centro Elementary Teachers Association (Willis) (8/11/82) PERB Decision No. 232); contract administration (Castro Valley Teachers Association (McElwain) (12/17/80) PERB Decision No. 149; SEIU Local 99 (Pottorff) (3/30/82) PERB Decision No. 203, and to grievance handling (Fremont Teachers Association (King) (4/21/80) PERB Decision No. 125; United Teachers of Los Angeles (Collins) (11/17/83) PERB Decision No. 258). PERB has ruled that a prima facie statement of such a violation requires allegations that: (1) the acts complained of were undertaken by the organization in its capacity as the exclusive representative of all unit employees; and (2) the representational conduct was arbitrary, discriminatory, or in bad faith.

The duty to represent employees fairly is not applicable to activities which are strictly internal union matters:

Only such activities that have a substantial impact on the relationships of unit members to their employers are subject to that duty. (Kimmitt, supra, at p. 8.)

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PERB has refused to review procedural objections to internal union elections. In Kimmett, supra, the Board stated:

[T]he election to select a representative to the negotiating team is not subject to the duty of fair representation. The negotiating team must represent all employees in the unit fairly, but that obligation does not entail the selection of negotiators in any particular manner. (SEIU, Local 99 Kimmett, supra, at p. 12.)

PERB explained its rationale as follows:

The internal organization structure could be scrutinized as could the conduct of elections for union officers to ensure conformance with an idealized participatory standard. However laudable such a result might be, the Board finds such intervention in union affairs to be beyond the legislative intent in enacting the EERA. (SEIU, Local 99 Kimmett, supra, at p. 16.)

While elections or recall of union officers may not implicate the duty of fair representation, organizational discipline of members may violate the duty under limited circumstances. The Board did not intend in Kimmett "to abdicate [its] jurisdictional power to determine whether an employee organization has exceeded its authority under subsection 3543.1(a) to dismiss or otherwise discipline its members." (California School Employees Association and its Shasta College Chapter #381 (Parisot) (1/31/83) PERB Decision No. 280, at p. 11.) Rather, an organization's failure to have reasonable provisions governing discipline of members, or its failure to abide by them, may violate the duty in light of the statutory prescription enabling employee organizations to "make reasonable provisions for the dismissal of individuals from membership" (see subsection 3543.1(a)).

In the instant case, the incident complained of concerns a recall election of a union officer. It does not appear that the recall election procedures, on their face, or as applied, constitute disciplinary measures or that, as a result of the recall, Charging Party's membership was impaired by suspension, fine, decree of ineligibility for state or chapter office, or any other disqualification. (Cf. Parisot, supra.) Further, no information has been presented which suggests that the recall was initiated and/or implemented by the statewide organization or that state policy No. 613 (discipline of members) was invoked (Exhs. "B" and "C").

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Anomalously, CSEA argues that the actions taken against Harmening can be construed as essentially disciplinary in nature. This argument does not appear to be valid. The procedure set forth in Article III, section 5 of the constitution of the Stockton School Employees chapter 318, followed during the recall of Charging Party, is not on its face disciplinary in nature (Exh. "A"). Nor does it appear that the procedure was applied as a disciplinary measure in this instance. It is true that some or all of the voters may have voted in favor of the recall because charging party was involved in a decertification campaign against the Association prior to becoming president. That decertification campaign conduct was the basis of one of several charges lodged against him. The likelihood that some voters sought charging party's recall on that basis, however, does not change the election into a disciplinary proceeding against charging party by the local and/or statewide organization.

For the foregoing reasons, the Parisot rule does not extend to the facts involved in this case. Nor does it appear that any other legal theory exists in support of the charge. The charge fails to state a prima facie violation of EERA section 3543.6(b). The allegations are dismissed and no complaint will issue thereon.

Pursuant to Public Employment Relations Board regulation section 32635 - (California Administrative Code, title 8, part III), you may appeal the refusal to issue a complaint (dismissal) to the Board itself.

Right to Appeal

You 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 Notice (section 32635(a)). To be timely filed, the original and five (5) copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) on July 5, 1984, or sent by telegraph or certified United States mail postmarked not later than July 5, 1984 (section 32135). The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

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 (5) copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal (section 32635(b)).

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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 the document filed with the Board itself (see section 32140 for the required contents and a sample form). The document will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

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 (section 32132).

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Very truly yours,

DENNIS M. SULLIVAN
General Counsel

By

PETER HAERFELD//
Regional Attorney

cc: General Counsel

CONSTITUTION

Exhibit A

ARTICLE I
NAME, OBJECTIVES, AND DEFINITIONS

Section 1. The name of this organization shall be the Stockton School Employees Chapter No. 318, California School Employees Association.

Section 2. Its objects shall be to promote the efficiency and raise the standards of service of all public school employees; afford opportunity for the investigation and interchange of ideas upon subject pertaining to the progressive development of the public school system; initiate and promote such legislation as may be for the best interests of the schools and for the members of the organization; establish a spirit of friendly cooperation with state and local administrative officials; and promote the good and welfare of the members of the organization.

Section 3. Definitions. Where the following words are used in the Constitution and Bylaws they shall mean:

- (a) Chapter - Stockton School Employees Chapter No. 318, California School Employees Association;
- (b) Parent organization or Association - the California School Employees Association;
- (c) District - the Stockton Unified School District;
- (d) Board - the Board of Education of the District;
- (e) Administration - the Administration of the District;
- (f) Gender - Where the masculine gender is used it shall also include the feminine gender.

Article II

MEMBERSHIP

Section 1. Any person regularly employed in or honorably retired from a public school shall be eligible for membership in this chapter upon the payment of the regular initiation fee and dues.

Section 2. Application for membership shall be filled in and signed by the applicant.

Article III

CHAPTER OFFICERS AND EXECUTIVE COMMITTEE, THEIR ELECTION, AND FISCAL YEAR

Section 1. Officers and Executive Committee.

- (a) The following offices shall constitute the officers/personnel of this chapter:
 - President
 - First Vice-President
 - Second Vice-President
 - Recording Secretary
 - Corresponding Secretary
 - Treasurer
 - Parliamentarian
 - Sergeant-at-Arms
 - Reporter
 - Jr. Post President

(EXHIBIT 1)

STOCKTON
UNIFIED SCHOOL DISTRICT
OFFICE OF THE
SUPERINTENDENT
STOCKTON, CALIFORNIA

(b) Executive Committee. The officers and one ~~representative~~ representative from each of the five major classifications (Custodial, Clerical/Technical, Maintenance, Para-Professional, and Cafeteria) shall constitute the Executive Committee of the chapter.

(c) A quorum of the Executive Committee shall be the majority of that body.

Section 2. Eligibility to Hold Office. The officers and the ~~elected~~ ~~representatives~~ from the five major classifications of this chapter shall be ~~elected~~ elected from among the members in good standing and shall continue in office, unless otherwise herein provided, until completion of the term of office, but shall automatically forfeit such office if at any time during the prescribed term of office such officer or job representative is not a member in good standing.

Section 3. Term of Office. The term of office shall be one year for the offices of President, First Vice-President, Second Vice-President, Recording Secretary, Corresponding Secretary, Treasurer, Parliamentarian, Sergeant-at-Arms, and Reporter. The Junior Past President shall serve until replaced by the new Junior Past President. The term of office for the elected representative from the major classifications to the Executive Committee shall be two years. The membership of Executive Committee representatives from custodial and clerical/technical shall be filled in the even number years, and the membership of Executive Committee representatives from maintenance, para-professional, and cafeteria shall be filled in odd numbered years.

Section 4. Election Procedures.

(a) For offices of President, First Vice-President, Second Vice-President, Recording Secretary, Corresponding Secretary, Treasurer, Parliamentarian, Sergeant-at-Arms, and Reporter: A nominating committee shall be appointed, as hereinafter provided, to offer nominations for President, First Vice-President, Second Vice-President, Recording Secretary, Corresponding Secretary, Treasurer, Parliamentarian, Sergeant-at-Arms, Reporter and shall report its recommendations at the October chapter meeting.

Nominations for those offices will then be accepted from the floor. Nominations for those offices will again be accepted from the floor at the chapter's November meeting. If there is only one nomination for an office, a motion from the floor may be made to cast a unanimous ballot for that (those) nominee(s). In the event more than one person is nominated for an office, elections shall be by secret ballot.

(b) For Job Representatives to the Executive Committee: All chapter members who are serving in the classification from which a representative is to be elected in accordance with Section 3, Article III of the Constitution, shall, by direction of and presided over by the President, hold a meeting prior to the November chapter meeting and elect from among its membership a representative to the Executive Committee.

(c) Officers may be installed in December but shall be installed not later than January 31. Officers shall serve from the beginning of the fiscal and chapter year regardless of the date of the installation ceremony.

Section 5. Recall or Removal of an Officer or Committee Member.

(a) An elected officer may be removed from office upon three-fourths (3/4) vote of a quorum at any regular meeting, and a classification representative of the Executive Committee may be removed from office upon three-fourths (3/4) vote of a quorum of those members in his classification present at any regular meeting, provided such officer or classification representative shall first have been notified of the intention to recall the officer and classification representative, the reasons therefor, and has been presented an opportunity to rebut all charges that may be brought against him (See also Section 2, Article III of the Constitution);

(b) Any chairman or member of any properly constituted committee may be removed from office by a three-fourths (3/4) vote of the Executive Committee, a quorum being present, provided such person shall have been notified of the Executive Committee's intention to remove the person and reasons therefor, and has been presented an opportunity

to rebut all charges brought against him. The chapter may direct the Executive Committee to remove any chairman or member but shall be governed by this section in its action except it shall report its findings to the chapter which shall vote on the issue. It shall require three-fourths (3/4) vote of the eligible membership in attendance to remove a chairman or member of a committee.

(c) A chairman or member of a committee shall automatically forfeit such office if at any time during the prescribed term of office such chairman or member is not a member in good standing.

(d) Any member of any committee failing to attend three (3) consecutive meetings, unless excused for cause, shall be automatically dropped from said committee and a successor appointed.

Section 6. Fiscal and Chapter Year. The fiscal and chapter year shall be from January 1 to December 31 of each year.

Article IV

COMMITTEES AND THEIR COMPOSITION

Section 1. Committees. The President shall appoint the following committees, which appointment shall be subject to ratification by the Executive Committee:

<u>Committee</u>	<u>Minimum Membership</u>
Education/Scholarship	3
Entertainment	3
Membership	1
Nominating (one from each of 5 class groups)	5
Insurance	1
Legislation	3
Research (Salary Survey)	5
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Section 2. Such committees as in the judgment of the Executive Committee are necessary for the welfare of the chapter shall be appointed. The Executive Committee shall determine the composition of such committees and the duration of appointment which shall not extend beyond the close of the fiscal year.

Section 3. The President shall be a member ex officio of all committees except the Nominating Committee.

Article V

DELEGATE TO CONFERENCES, ELECTION AND RESPONSIBILITIES

Section 1. Delegates. Voting delegates to any annual or special conference of the parent organization shall be as follows:

(a) The chapter president;

(b) Such other delegates in the number authorized by the Executive Committee and not to exceed the number authorized by the constitution and bylaws of the parent organization.

Section 2. Election. Authorized delegates, other than the President, shall be nominated from members in good standing for at least one year, at the regular meeting in March and elected at the regular meeting in April. Alternates for the members authorized delegates

