

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ELIZABETH OLSON,)	
)	
Charging Party,)	Case No. LA-CO-10-H
)	
v.)	PERB Decision No. 682-H
)	
AMERICAN FEDERATION OF STATE,)	June 20, 1988
COUNTY AND MUNICIPAL EMPLOYEES,)	
COUNCIL 10,)	
)	
Respondent.)	

Appearances; Elizabeth Olson on her own behalf.
Before Hesse, Chairperson; Craib and Shank, Members.

DECISION

HESSE, Chairperson: This case is before the Public Employment Relations Board (Board) on an appeal filed by charging party, Elizabeth Olson, to the attached Board agent's dismissal of her unfair practice charge against the American Federation of State, County and Municipal Employees, Council 10 (AFSCME). The charge alleged that AFSCME breached its duty of fair representation and thereby violated the Higher Education Employer-Employee Relations Act¹ (HEERA) sections 3571.1(b) and 3578 by a series of actions related to the processing and arbitration of a grievance.

HEERA is codified at Government Code section 3560 et seq.

The Board has considered the charging party's appeal of the dismissal and, finding the dismissal free from error, adopt it as the Decision of the Board itself.

ORDER

The unfair practice charge in Case No. LA-CO-10-H is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Craib and Shank joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Boulevard, Suite 650
Los Angeles, CA 90010-2334
(213)736-3127



March 22, 1988

Elizabeth Olson

Re: IA-CO-10-H, Elizabeth Olson v. American Federation of
State, County and Municipal Employees, Council-10
DISMISSAL OF UNFAIR PRACTICE CHARGE

Dear Ms. Olson:

Elizabeth Olson filed this charge alleging that American Federation of State, County and Municipal Employees, Council (Council 10) violated Higher Education Employer-Employee Relations Act (HEERA) section 3571.1(b) by a series of actions related to the processing and arbitration of a grievance Ms. Olson and other employees of the UC Irvine had filed in 1984 (Case No. 0137-UCI). Ms Olson has stated that this charge is filed only in her own behalf, not on behalf of any other employees involved in the grievance.

I indicated to you in my attached letter dated March 4, 1988 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 which would correct the deficiencies explained in that letter, you should amend the charge accordingly. You were further advised that unless you amended the charge to state a prima facie case, or withdrew it prior to March 11, 1988, it would be dismissed.

You asked for an extension of time to consider whether to amend the charge, and we discussed my letter on March 21 and 22 on the telephone. During those conversations, you made two factual clarifications. First, you stated that the settlement of the grievance on March 3, 1987, occurred after the arbitration hearing had been completed. You indicated that at the completion of the hearing, the arbitrator had told Sharon Silva, the only grievant in the matter, that he wouldn't find a violation, and asked her if she would settle. The settlement offer was then made and accepted by Ms. Silva. Second, you stated that Council 10 had, at some point prior to the arbitration assigned Linda Preston to handle the arbitration, but then had reassigned Nadra Floyd as your representative when it was time for the arbitration.

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None of these facts leads me to conclude that you have now stated a prima facie case.¹ I am therefore, dismissing your charge for the reasons stated in my March 4th letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, 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 dismissal (California Administrative Code, title 8, section 32635(a)). To be timely filed, the original and five copies of such **appeal must be** actually received by the Board itself before the close of business (5:00 p.m.), or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. Code of Civil Procedure section 1013 shall apply. (See 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 copies of a statement in opposition within twenty calendar days following the date of service of the appeal (section 32635(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 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 calendar days before the

1Nor do these facts, or any facts stated in my March 4 letter support a prima facie case on an interference theory.

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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.

Sincerely,

JOHN SPITTLER
Acting General Counsel

By
Sandra Owens Dennison
Regional Attorney

Attachment

cc: Nadra Floyd

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
3530 Wilshire Boulevard, Suite 650

Los Angeles, CA 90010-2334
(213) 736-3127



March 4, 1988

Elizabeth Olson

Re: LA-CO-10-H, Elizabeth Olson v. American Federation of
State, County and Municipal Employees. Council 10

Dear Ms. Olson: _____

Elizabeth Olson filed this charge alleging that American Federation of State, County and Municipal Employees, Council (Council 10) violated Higher Education Employer-Employee Relations Act (HEERA) section 3571.1(b) by a series of actions related to the processing and arbitration of a grievance Ms. Olson and other employees of the UC Irvine had filed in 1984 (Case No. 0137-OCI). Ms Olson has stated that this charge is filed only in her own behalf, not on behalf of any other employees involved in the grievance.

My investigation of the Charge revealed the following information.

In the summer of 1984, UC Irvine reduced the work year of four employees in the School of Fine Arts from 12 to 10 months. Ms. Olson was one of the affected employees. A group grievance was filed about the work year reduction by Council 10. Council 10's representative, Ray Badilla, settled that grievance with UC, and also signed a "secret" agreement with UC that Council 10 would not pursue grievances about the implementation of the partial year appointments. In December 1984, Ms. Olson filed grievance Case Number 0137-UCI on her own behalf and on behalf of three other employees challenging the work year reduction. In April 1985 that grievance was denied by the University at step three of the grievance procedure, based in part upon the secret agreement of Badilla not to pursue these grievances.

On April 29, 1985 Ms. Olson and the three other employees filed an unfair practice charge (Case No. LA-CO-5-H) alleging that Council 10 had breached its duty of fair representation to her and the other charging parties by waiving their right to file grievances about the reductions in work year, and without informing charging parties of this waiver. Also in April 1985,

Olson voluntarily left the employ of the University.¹

The 1985 Charge filed by Olson and the other employees was settled by a written settlement agreement signed on August 29, 1985. That agreement provided that if grievance Case Number 0137-UCI was denied, Council 10 would "make a sincere effort to obtain back pay for Vinita Parrish and Elizabeth Olson for the summer of 1984." Additionally, that agreement provided Council 10 would "pursue in good faith, and with a sincere effort, the grievance in Case No. 0137-UCI."

The Charge alleges that Council 10 has breached that settlement agreement and failed to represent Ms. Olson fairly. It recites events which occurred in the summer of 1986, and that when the arbitration was finally scheduled for hearing on March 3, 1987, Council 10's representative Nadra Floyd, handled the case poorly, and threw together her presentation at the last moment. Ms Olson stated that Ms. Floyd stated on that date that she had been preparing for a conference the previous evening, and was operating on only three hours of sleep. Ms. Olson also stated that she had asked Ms. Floyd to get a continuance of the arbitration hearing, so that another Council 10 representative, whom Ms. Olson believed would represent her interests better, could handle the matter. Ms. Floyd refused to seek a continuance and to allow the other representative to take over the matter. Ms. Olson also states that she asked Ms. Floyd to call the Dean of the School of Fine Arts as a witness, and that although the Dean did ultimately appear at the location set for the arbitration hearing, Ms. Floyd never called him to testify. Ms. Floyd is also alleged to have stipulated at the time for the hearing to begin, that Sharon Silva was the only grievant remaining in the case.

The grievance was settled on the date scheduled for the arbitration, without a hearing being conducted. Sharon Silva, the only grievant of the original four still an employee of UC

¹The University of California and Council 10 are parties to a collective bargaining agreement that provides in Article 6, Section A.5:

Employees who voluntarily terminate their employment with the University shall have their pending grievances immediately withdrawn and will not benefit by any subsequent settlement or disposition of any individual or group grievance.

on the date of the arbitration, did not object to the settlement agreement.

After the arbitration hearing, Ms. Olson asked Ms. Floyd to pursue further the issue of back pay for her for the summer of 1984. Ms. Floyd is alleged to have told Ms. Olson that Council 10's attorney had advised them that nothing further could be done, and that it was Ms. Floyd's opinion that the University had given everything they would ever give on this issue.

In June 1987, Ms. Olson wrote Ms. Floyd, asking her about the back pay issue for herself and another employee involved in the grievance. In July 1987, Ms. Floyd wrote back to Ms. Olson, advising her that the University was adamant in its position that it had no obligation to give Ms. Olson any back pay, since she was no longer an employee of the University. Ms. Floyd quoted section A.5 of Article 6 of the agreement. Ms. Floyd also stated that she believed that Council 10 had made every effort possible regarding the back pay issue, but had been unsuccessful. A copy of that letter is attached.

The charge as presently written fails to state a prima facie case for the reasons which follow. Charging Party has alleged that the exclusive representative denied Charging Party the right to fair representation and thereby violated HEERA section 3571.1(b). A Charging Party must state sufficient facts to demonstrate that the exclusive representative's conduct was arbitrary, discriminatory or in bad faith, in order to state a prima facie case of a breach of duty of fair representation. Rocklin School District (Romero) (1980) PERB Decision No. 124. The Board has adopted the Rocklin (Romero) standard for duty of fair representation cases filed under HEERA. International Union of Operating Engineers, Local 501 (Reich) (1986) PERB NO. 591-H.

The stated facts do not demonstrate that, within the statutory period, Council 10 acted in an arbitrary, discriminatory or bad faith manner in their conduct of the grievance and arbitration. At most the stated facts indicate there may have been some negligence on the part of Council 10's representative in the preparation and presentation of the arbitration. Mere negligence, however, is not a breach of the duty of fair representation. Los Angeles Unified School District (Scates) (1983) PERB Decision No. 341.

Charging Party also alleges that Council 10 breached the settlement agreement in charge LA-CO-5-H. This allegation does not state a prima facie case.

Section 3563.2(b) of the HEERA states:

The Board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of such an agreement that would not also constitute an unfair practice under this chapter.

The Public Employment Relations Board (PERB) has held that this requirement prohibits issuance of a complaint unless the facts in the charge state an independent violation of the statute in addition to a possible violation of the agreement. Baldwin Park Unified School District (1979) PERB Decision No. 92.

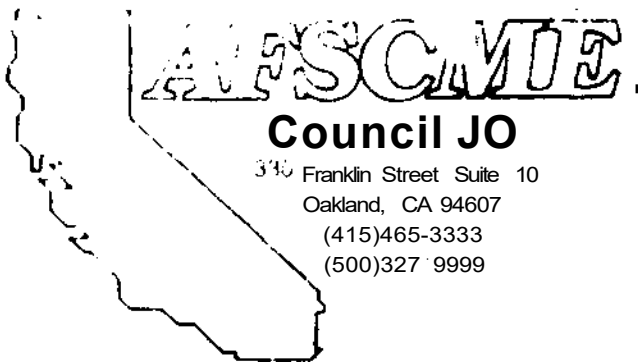
Although Council 10's alleged failure to adequately prosecute the grievance and/or seek back pay for Ms. Olson may constitute a violation of the settlement agreement, there is no evidence which indicates that these facts give rise to an independent unfair practice. In order to state an independent unfair practice, the Charging Party would have to state facts to show how Council 10's behavior with respect to the grievance and the back pay issue within the statutory period, was arbitrary, discriminatory, or in bad faith. As stated above, no facts have been presented upon which such a finding could be made, even on a prima facie level.

For these reasons, the charge as presently written does not state a prima facie case. If you feel that there are any factual inaccuracies in this letter or any additional facts which would correct the deficiencies explained above, please amend the charge accordingly. 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 the charging party. The amended charge must be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before March 11, 1988, I shall dismiss your charge. If you have any questions on how to proceed, please call me at (213) 736-3127.

Sincerely,

Sandra Owens Dennison
Regional Attorney

Attachment



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Jan 28 12 23

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Son Diego Office
3909 Centre Street Room 210
San Diego. CA 92103
(619) 2960342

Reply to Oakland

July 20, 1987

Elizabeth Olson
5616 Surf Way
Sacramento, CA 95822

Dear Ms. Olson:

In response to your letter of last month, as I have stated to you in previous conversations, the position of the University of California in regards to back pay for Vinita Parrish is that our rejection of their offers to settle the arbitration by giving Vinita back pay in their minds closed the matter.

The University made two offers: one in writing, dated July 28, 1986; one orally at the arbitration hearing at UC Irvine. Each of you participated in the discussion which led to the rejection of those offers of settlement. Discussion with our union attorneys indicates that there is no other forum to raise the matter.

In regards to back pay for Elizabeth Olson, the University has consistently maintained that as Elizabeth Olson no longer works at the University, they are under no obligation to even propose back pay to Ms. Olson. Article 6, Section A.5 of our contractual agreement supports this position. It reads in part: "Employees who voluntarily terminate their employment with the University shall have their pending grievances immediately withdrawn and will not benefit by any subsequent settlement or disposition of any individual or group grievance."¹¹

Again, though I have raised the issue with them on numerous occasions, they remain adamant in their position on this matter. It is my firm belief that the Union has made every effort possible regarding the back pay issue for Ms. Olson and Ms. Parrish. Unfortunately, we have been unsuccessful in moving the University from its position.

Sincerely,

Naadra Floyd
Executive Director