STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

W. SLATER HOLLIS,	)	
	)	
Charging Party,	)	Case No. LA-CO-15-H
	)	
v.	)	PERB Decision No. 709-H
	)	
CALIFORNIA FACULTY ASSOCIATION,	)	December 21, 1988
	)	
Respondent.	)	

Appearance: Dr. W. Slater Hollis, on his own behalf.

Before Hesse, Chairperson; Porter, Craib and Shank, Members.

DECISION AND ORDER

This case is before the Public Employment Relations Board (Board) on appeal by Charging Party of the Board agent's dismissal, attached hereto, of his charge that the Respondent violated subdivisions (a), (b) and (e) of section 3571.1 of the Higher Education Employer-Employee Relations Act (HEERA). We have reviewed the dismissal and, finding it to be free of prejudicial error, adopt it as the Decision of the Board itself.[1]

[1]We clarify, however, two technical errors made by the Board agent in the dismissal letter for this charge. First, he mis-cites sections of HEERA alleged by Charging Party to have been violated. The correct statutory provisions should have been, HEERA section 3571.1, subdivisions (a), (b) and (e). Second, in the agent's reference to a companion charge (LA-CE-222-H) against the employer, he mistakenly identifies it as being against the exclusive representative. Charging Party demonstrated no prejudice caused by these technical errors.

The unfair practice charge in Case No. LA-CO-15-H is hereby DISMISSED WITHOUT LEAVE TO AMEND.

By the BOARD[2]

[2]Member Camilli did not participate in this Decision.

STATE OF CALIFORNIA GEORGE DEUKMEJIAN, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Headquarters Office
1031 18th Street
Sacramento, CA 95814-4174
(916) 322-3088

September 30, 1988

Dr. W. Slater Hollis, Ph.D., J.D.

Re: W. Slater Hollis v. California Faculty Association.
Case No. LA-CO-15-H - Amended Charge
DISMISSAL AND REFUSAL TO ISSUE COMPLAINT

Dear Dr. Hollis:

Your amended charge was filed on June 28, 1988. It alleges violations of the Higher Education Employer-Employee Relations Act (HEERA) sections 3571(a), (c) and (d).

Essentially, you have alleged that the employer had entered into an illegal agreement with the exclusive representative. You allege that the employer interfered with and met and conferred in bad faith with the exclusive representative. You base this allegation on your dissatisfaction with certain provisions of the agreement.

You alleged in a companion charge (LA-CE-222-H) against the exclusive representative that it had breached its duty of fair representation because it created a two-tier Faculty Early Retirement Program (FERP). The organization, faced with a proposal to completely eliminate the program, negotiated a two-level FERP, i.e., FERP would be available to all faculty members except those in hard to recruit/replace disciplines. You were in a designated hard to recruit/replace discipline, business. A warning letter was issued on this charge.

You believe that the employer entered into a collusive contract to your detriment. You believe that the employee organization committed an unfair practice in doing so and you believe that the employer likewise committed an unfair practice.

I indicated to you in my attached letters dated August 19 and 30, 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 that 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 September 29, 1988, the charge would be dismissed.

I have not received either a request for withdrawal or a second amended charge. I am therefore dismissing the charge based on the facts and reasons contained in my August 19, 1988 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 (California Administrative Code, title 8, section 32135). Code of Civil Procedure section 1013 shall apply. 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 (California Administrative Code, title 8, 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 California Administrative Code, title 8, 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 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 (California Administrative Code, title,8, 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,

CHRISTINE A. BOLOGNA
General Counsel

By _____
John W. Spittler er
Assistant General Counsel

Attachments

cc:

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STATE OF CALIFORNIA George DEUKMEJIAN, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Headquarters Office

1031 18th St, Sacramento, CA 95814 4174
(916) 322-3088

August 19, 1988

Dr. W. Slater Hollis, Ph.D., J.D.

Re: *VI.* Slater Hollis, et al. v. the California Faculty Association, et al., Case No. LA-CO-15-H

Dear Dr. Hollis:

Your amended charge[1] was filed on June 28, 1988. It alleges violations of the Higher Education Employer-Employee Relations Act (HEERA) sections 3571.1, 3571.1(a), (b) and (e).

Essentially, you have alleged that the employee organization denied you the right to fair representation in negotiations guaranteed by HEERA section 3578 and thereby violated HEERA section 3571.1(e).

Section 3578 provides that the employee organization's duty of fair representation is violated where representation ". . . is arbitrary, discriminatory or in bad faith."

You believe that the employee organization violated its duty of fair representation because it created a two-level Faculty Early Retirement Program (F.E.R.P.). The employee organization, faced with a proposal to completely eliminate the program, negotiated a two-level F.E.R.P., i.e., F.E.R.P. would be available to all faculty except those in hard to recruit/replace disciplines. You were in a designated hard to recruit/replace discipline, business. You claim this amounts to a violation of the duty of fair representation. You bane your claim on statutes both within and without PERB's

8 of the California Administrative Code §32615 requires that the charge be signed under penalty of perjury by the charging party or its agent. Accordingly, you can only assert your rights and cannot initiate a "class-action" type charge.

jurisdiction. You do not allege how the exclusive representative's action was without a rational basis or devoid of honest judgment. You simply state that you had access to F.E.R.P. before negotiations and you lost access to F.E.R.P. as a result of the negotiations. You claim that you (and those like you) were sacrificed to benefit the remaining unit members.

You state that you had, and made use of, access to the employee organization to make your views known. You do not allege that you were shut out or prevented from expressing your views. You do not allege that your views were ignored. The negotiations simply did not turn out to your satisfaction.

In Tornetta v. CSEA (6/21/85) PERB Decision No. 508, the Board reviewed the law regarding the duty of fair representation in negotiations.

> The duty of fair representation imposed on the exclusive representative extends to contract negotiations. Redlands Unified School District (Faeth) (9/24/78) PERB Decision No. 72; Los Angeles Community College District (Kimmett) (10/19/79) PERB Decision No. 106; Rocklin Unified School District (Romero) (3/26/80) PERB Decision Ho. 124.
>
> In the Redlands, supra, case the Board looked to federal law to determine the scope of the duty of fair representation in negotiations. It noted that an exclusive representative has wide discretion in negotiating a contract which may not please every bargaining unit member so long as it does not engage in arbitrary, discriminatory or bad faith conduct. Regarding such discretion, the Board quoted from the United States Supreme Court opinion in Ford Motor Company v. Huffman (1953) 345 U.S. 330, 31 LRRM 254 8, 2551:
>
> > Any authority to negotiate derives its principal strength from a delegation to the negotiators of a discretion to make such concessions and accept such advantages as, in the light of all relevant considerations, they believe will best serve the interests of the parties represented. A major responsibility of negotiators is to weigh the relative advantages and disadvantages of

> differing proposals . . . 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.

In the Rocklin case, supra, the Board also discussed the broad discretion afforded the exclusive representative in representing its unit members. This case involved a situation where the exclusive representative failed to negotiate with the employer regarding employee benefits notwithstanding a provision in a prior agreement providing for annual negotiations as to such benefits. The Board stated that the charging party's pleadings merely suggested that the union could have negotiated as to benefits but did not do so. Since the union's duty of fair representation does not encompass an obligation to negotiate any particular item the charge was dismissed. The Board held that to establish a prima facie case alleging arbitrary conduct, the charge 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.

In Sacramento City Teachers Association (11/6/84) PERB Decision No. 428, the Board dismissed another case alleging a failure to fairly represent employees during negotiations. The exclusive representative's board of directors voted not to negotiate a specific proposal that would have resulted in an increased salary for certain teachers. The

> proposal was turned down after the board of directors heard arguments for and against the insertion of the proposal into the bargaining package. The Board found no arbitrary, discriminatory or bad faith conduct because the union had provided access for members to communicate their views and considered the views presented. The Board stated that the union had no obligation to take the proposal to the table, so long as it had legitimate non-discriminatory and non-arbitrary reasons for refusing to do so.
>
> (Tornetta v. CSEA, id., PERB Decision No. 508 at pp. 9-10.)

While citing much authority, you have failed to allege how the employee organization violated its duty of fair representation within the legal analysis reviewable by PERB. Therefore, no prima facie case has been stated.

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 August 30, 1988, I shall dismiss your charge. If you have any questions on how to proceed, please call me at (916) 323-8015.

Sincerely,

John W. Spittler
Assistant General Counsel

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