STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

NORMAN P. BARTH, Charging Party,	)	Case No. S-CO-180
v.	)	PERB Decision No. 712
LOS RIOS COLLEGE FEDERATION OF TEACHERS, LOCAL 2279, CFT/AFT, Respondent.	)	December 29, 1988

Appearances: Norman P. Barth, on his own behalf; Robert J. Bezemek, Attorney, for Los Rios College Federation of Teachers, Local 22 79, CFT/AFT.

Before Craib, Shank and Camilli, Members.

DECISION

CAMILLI, Member: This case is before the Public Employment Relations Board (Board) on an appeal filed by the charging party to the attached dismissal of the charge by the Board agent. The charge alleges that the Los Rios College Federation of Teachers failed to fulfill its duty of fair representation with regard to a grievance filed by the charging party. This conduct is alleged to violate sections 3544.9 and 3543.6 of the Educational Employment Relations Act. The Board agent held that the charging party had not stated a prima facie case. We have reviewed the dismissal and, finding it to be free of prejudicial error, adopt it as the Decision of the Board itself.

The unfair practice charge in Case No. S-CO-180 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Craib and Shank joined in this Decision.

STATE OF CALIFORNIA GEORGE DEUKMEJIAN, *Governor*

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916) 322-3198

September 1, 1988

Norman P. Barth

re: Barth v. Los Rios Community College Federation of Teachers
Unfair Practice Charge No. S-CO-180
Dismissal and Refusal to Issue Complaint

Dear Mr. Barth:

The above-referenced charge alleges that the Los Rios College Federation of Teachers (Federation) failed to fulfill its duty of fair representation to you with regard to a grievance filed on November 5, 1987. This conduct is alleged to violate sections 3544.9 and 3543.6 of the Educational Employment Relations Act (EERA).

I indicated to you in my attached letter dated August 23, 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 August 30, 1988, it would be dismissed.

I have not received either a request for withdrawal or an amended charge. I am therefore dismissing the charge based on the facts and reasons contained in my August 23 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 (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 (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 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,

CHRISTINE A. BOLOGNA
General Counsel

By _____
Robert Thompson
Deputy General Counsel

Attachment

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916) 322-3198

August 23, 1988

Norman P. Barth

Re: Barth v. Los Rios College Federation of Teachers
Unfair Practice Charge No. S-CO-180
WARNING LETTER

Dear Mr. Barth:

The above-referenced charge alleges that the Los Rios College Federation of Teachers (Federation) failed to fulfill its duty of fair representation to you with regard to a grievance filed on November 5, 1987.[1] This conduct is alleged to violate sections 3544.9 and 3543.6 of the Educational Employment Relations Act (EERA).

My investigation revealed the following facts. You are an instructor at the Sacramento City College campus of Los Rios Community College District (District). Your position is exclusively represented by the Federation. On or about August 5, 1987, the Federation and the District signed a collective bargaining agreement (agreement) to be effective from July 1, 1987 through June 30, 1990. This agreement contains a provision by which the District pays the Federation a certain amount of money to maintain its offices. Specifically Article 19, section 7 reads:

> LRCFT is contractually obligated to share premises, located at 1225 Eighth Street, Suite 475, Sacramento, California, 95814, with the California Federation of Teachers (CFT) from August 1, 1986 through July 31, 1989.
>
> a. The District agrees to reimburse LACFT for the cost incurred in employing a secretary-clerk ($26,440 per annum, for salary and fringe benefits).

[1]The propriety of the contract clauses themselves are the subject of two other unfair practice charges (S-CE-1216 and S-CO-181) in which complaints issued on July 13, 1988.

b. The District agrees to reimburse LRCFT for its share of the rent ($6,000 per annum) until the LRCFT-CFT contract expires on July 31, 1989.

c. The District agrees to reimburse LRCFT for its share of any rent increase which is based in direct ratio to the rent paid by CFT ($1,186) and LRCFT ($500) - 70% to 30%.

d. The District agrees to reimburse LRCFT for its annual cost of office rental equipment ($4,000), telephone ($2,500), paper, ink, and other office supplies ($4,000).

e. On August 1, 1989, the District shall in lieu of "b" and "c" (above), provide LRCFT with an office of at least 250 square feet on district-owned property, e.g., conversion of the Sacramento City College "Faculty Shack." The site is to be determined by mutual agreement.

f. In return for the above, LRCFT agrees to rebate/reduce LRCFT fees to unit members by an amount equal to the cost of this provision.

This Agreement shall remain in force for the length of the contract entered into by the Los Rios College Federation of Teachers and the Los Rios Community College District. Costs associated with this provision are charged to LRCFT's salary and fringe benefit package. At the end of this contract term, LRCFT and/or the District may seek, through the negotiation process, to continue this provision into subsequent contracts.

On or about November 2 you filed a grievance with the District alleging that section 1.1.6 of Appendix A of the Collective Bargaining Agreement had been violated. This section deals with provisions of the salary schedule and provides that unit members' salaries will be increased based on certain funds remaining in District hands. In addition, you assert in the grievance that section 7 of Article 19 creates an illegal agency fee arrangement. This grievance was denied at the president's level on November 12 and on the District's level on

January 11, 1988. In its response the District asserts that it is administering the contract pursuant to its terms and intent and that the grievance does not state a misinterpretation, misapplication or violation of the provisions of the agreement.

On January 12 you requested the grievance be taken to a Board of Review (arbitration) by the Federation. On January 22 the Federation's Executive Director Richard Hemann indicated in a letter to you that the request for a Board of Review had been denied because "the Federation (sic) has complied with Article 19, section 7, and Appendix A of the contract." You were also informed in this letter that this decision could be appealed to the Federation's executive board in accordance with Federation Bylaw Article 1, section 5. On February 3, 1988, you met with the Federation's Executive Board and was given the opportunity to present your arguments for taking your grievance to a Board of Review. During this meeting members of the Executive Board asked you questions concerning both the factual disputes present in the grievance as well as the underlying legal theories in support of the grievance. By letter dated February 4, Mr. Hemann informed you that the Executive Board had voted unanimously to deny the request to take your grievance to a Board of Review.

You have alleged that the exclusive representative denied you the right to fair representation guaranteed by EERA section 3544.9 and thereby violated section EERA 3543.6(b). The duty of fair representation imposed on the exclusive representative extends to grievance handling. Fremont Teachers Association (King) (1980) PERB Decision No. 125; United Teachers of Los Angeles (Collins) (1983) PERB Decision No. 258. In order to state a prima facie violation of this section of the EERA Charging Party must show that the Association's conduct was arbitrary, discriminatory, or in bad faith. In United Teachers of Los Angeles (Collins). Id.. the Public Employment Relations Board (PERB) stated:

> Absent bad faith, discrimination, or arbitrary conduct, mere negligence or poor judgment in handling a grievance does not constitute a breach of the union's duty.
>
> . . . . . .

> A union may exercise its discretion to determine how far to pursue a grievance in the employee's behalf as long as it does not arbitrarily ignore a meritorious grievance or process a grievance in a perfunctory fashion. A union is also not required to process an employee's grievance if the chances for success are minimal.

In order to state a prima facie case of arbitrary conduct violating the duty of fair representation, a Charging Party:

> . . . 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. Reed District Teachers Association, CTA/NEA (Reyes) (1983) PERB Decision No. 332, citing Rocklin Teachers Professional Association (Romero) (1980) PERB Decision No. 124.

You assert that the Federation's inquiry into the legal basis for your grievance demonstrates that the union was acting in bad faith. However, as noted above, PERB held in United Teachers of Los Angeles (Collins) (1982) supra, that

> "A union is also not required to process an employee's grievance if the chances for success are minimal."

The Federation's determination of its chances for success in the grievance must necessarily be based on both the factual as well as legal underpinnings of the grievance. Therefore, it is not inappropriate for the Federation's Executive Board to ask questions concerning the legal theories upon which the grievance was based. This was especially true since Article 18, section 1.1(a) of the agreement requires that a grievance be a complaint by "a unit member that she/he has been adversely affected by a misinterpretation, misapplication, or violation of the provisions of this agreement, . . ." In order to determine whether the grievance met this threshold requirement, it would be necessary to understand both its factual and legal bases.

Other than the discussion that occurred at the Executive Board meeting, you have not provided evidence which would indicate that this grievance was handled in a perfunctory manner or that the union acted with bad faith, discriminatory motive, or arbitrarily. Without such evidence, a complaint based on this charge cannot issue.

For these reasons, the charge as presently written does not state a prima facie case. If 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 must 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, please call me at (916) 322-3198.

Sincerely,

Robert Thompson
Deputy General Counsel

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