STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ERMA M. PALOMA,	)	
	)	
Charging Party,	)	Case No. LA-CO-562
	)	
v.	)	PERB Decision No. 909
	)	
CORONA-NORCO TEACHERS ASSOCIATION,	)	November 7, 1991
	)	
Respondent.	)	

Appearances: Erma M. Paloma, on her own behalf; California Teachers Association by Charles R. Gustafson, Attorney, for Corona-Norco Teachers Association.

Before Hesse, Chairperson; Shank and Camilli, Members.

DECISION AND ORDER

CAMILLI, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Erma M. Paloma (Paloma) of a PERB Board agent's dismissal (attached hereto) of her charge alleging that the Corona-Norco Teachers Association (Association) violated section 3543.6(b) of the Educational Employment Relations Act (EERA)[1] by denying Paloma's request to pursue a grievance against her employer to arbitration.

[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3543.6 states, in pertinent part:

> It shall be unlawful for an employee organization to:
>
> (b) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

In her appeal, Paloma asserts that as a result of telephone conversations with the PERB Board agent, it is her belief that the Board agent is biased in favor of the Association. With regard to Paloma's contention of bias on the part of the Board agent, the Board finds no basis for such a claim. In addition, Paloma asserts that the Association has never notified her in writing of its denial of her request to pursue her grievance to arbitration.[2] She asserts that this is evidence that the Association's conduct in denying her request was arbitrary, discriminatory and in bad faith.

In his warning and dismissal letters, the Board agent discusses Paloma's allegation that the Association violated the duty of fair representation because: (1) the Association did not inform Paloma of its decision in writing; and (2) the Association's grievance chairman, Max Wallace, did not notify Paloma that her request had been denied until after she had made numerous calls and left messages with the Association. In his warning and dismissal letters, the PERB Board agent correctly finds that neither this conduct nor any other conduct alleged in the charge constitute arbitrary, discriminatory or bad faith conduct in violation of the duty of fair representation.

The Board has reviewed the Board agent's warning and dismissal letters, and finding them to be free of prejudicial error, adopt them as the decision of the Board itself.

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[2]The Association's response asserts that it has already sent a letter to Paloma explaining its decision.

The unfair practice charge in Case No. LA-CO-562 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairperson Hesse and Member 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

September 18, 1991

Erma M. Paloma

Re: DISMISSAL AND REFUSAL TO ISSUE COMPLAINT, Unfair Practice Charge No. LA-CO-562, Erma M. Paloma v. Corona-Norco Teacher's Association

Dear Ms. Paloma:

I indicated to you in my attached letter dated September 4, 1991, 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 11, 1991, the charge would be dismissed.

On September 16, 1991, I received from you an amended charge. The amended charge argues in part (1) that you were "transferred" rather than "reassigned" from kindergarten to second grade and (2) that Level Two grievances "automatically go to advisory arbitration." Both of these arguments are contradicted by the contractual language and other undisputed facts.

Although Section 14.1 of the collective bargaining agreement defines "transfer" to include "any District action which results in the change of a unit member's . . . grade level," it immediately goes on to state as follows: "For the purposes of this section, the 'grade level' shall be K-6, 7-8, or 9-12." In changing from kindergarten to second grade, you thus remained in the same "grade level" (K-6) and therefore were not "transferred" within the meaning of the agreement.

Section 20.2(c) of the agreement provides in relevant part as follows:

> Level Three: In the event the grievant is not satisfied with the disposition of the grievance at Level II, the grievant may, within ten (10) days following, submit a written request to the Association that the Association submit the grievance to advisory

> arbitration. The Association, by written notice to the Superintendent within ten (10) days after receipt of the grievant's request, may submit the grievance to the advisory arbitration. [Emphasis added.]

The use of the word "may" in this Section (rather than the word "shall," for example) indicates that the submission of a grievance to advisory arbitration is not automatic or mandatory but rather discretionary. The letters attached to your original charge show that in the past the Association has in fact exercised its discretion not to pursue other grievances to advisory arbitration.

In your amended charge, you also allege that Association Grievance Chairman Max Wallace did not contact you about the status of your grievance until after you yourself had made numerous calls and left messages. It is still not apparent from the charge, however, how this or any other part of the Association's handling of your grievance amounted to arbitrary, discriminatory or bad faith conduct in violation of the duty of fair representation. I am therefore dismissing the charge, based on the facts and reasons contained in this letter and in my September 4 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 Code of Regs., tit. 8, sec. 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 Code of Regs., tit. 8, sec. 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 Code of Regs., tit. 8, sec. 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 Code of Regs., tit. 8, sec. 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 Code of Regs., tit. 8, sec. 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 W. SPITTLER
General Counsel

By _____
Thomas J. Allen
Regional Attorney

Attachment

cc: Deborah S. Wagner

PUBLIC EMPLOYMENT RELATIONS BOARD

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

September 4, 1991

Erma M. Faloma

Re: WARNING LETTER, Unfair Practice Charge No. LA-CO-562, Erma M. Paloma v. Corona-Norco Teacher's Association

Dear Ms. Paloma:

In the above-referenced charge, you allege that the Corona-Norco Teacher's Association (Association) violated its duty of fair representation, in alleged violation of Government Code section 3543.6(b) of the Educational Employment Relations Act (EERA).

My investigation of this charge reveals the following facts.

You are a certificated employee of the Corona-Norco Unified School District (District), in a unit for which the Association is the exclusive representative. For seventeen years you taught kindergarten, and in 1990-91 you were on Track D. On April 4, 1991, you were called to a meeting in your Principal's office, where the presence of both the Principal and the Vice Principal led you to believe that the meeting was "corrective." The Principal informed you, without discussion, that you were being reassigned to teach second grade on Track A for 1991-92

On April 8, 1991, you filed grievances alleging violations of Sections 14.1 and 14.5 of the collective bargaining agreement between the District and the Association. Section 14.1 provides in relevant part, "At the elementary level a change of more than two grades . . . will be discussed with the affected teacher prior to any final decision." Section 14.5 provides in full, "No transfers or class assignments shall be made for disciplinary reasons." In your grievance, you stated that you felt your reassignment was "for disciplinary reasons" because (1) your old assignment was going to a teacher about whom parents had voiced concerns and (2) you had spoken out against the Principal on PTA issues.

The District denied your grievances at Level One and Level Two. In his Level One response, your Principal stated in part, "Your assignment of second grade has been made solely upon your

strenghts [sic] and we believe you will positively strenghten [sic] our second grade team of teachers." On May 6, 1991, you submitted a letter to the Association, requesting that it "respond to me in writing" and "submit my grievance to advisory arbitration."

Although you were not informed of the meeting, the Association's Grievance Committee met on May 13, 1991, and decided not to pursue your grievances to arbitration. In its response to your unfair practice charge, the Association asserts that it found no violation of Section 14.1 because a "move from kindergarten to second grade is a move of two grades, not more than two grades [emphasis original]." It also asserts that it found no provable violation of Section 14.5 because there was no pending disciplinary action against you, there was nothing to tie the reassignment to your outspokenness on PTA issues, and there was insufficient evidence in general to show that the reassignment was for disciplinary reasons.

The Association did not inform you of its decision in writing. Attached to your charge are copies of letters to two other unit members, informing them (without explanation) that their grievances would not be taken to arbitration. You identify these two unit members as Caucasian; you identify yourself as Asian. In its response to your charge, the Association asserts that it "decided that instead of issuing the usual form letter telling the employee her grievance would not be taken to arbitration, it would direct the Grievance Chairman, Max Wallace, to meet personally with Ms. Paloma and explain why the matter would not be taken to arbitration."

Based on the facts stated above, the charge does not state a prima facie violation of the EERA, for the reasons that follow.

As Charging Party, you allege that the Association, as 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, a Charging Party must show that the exclusive representative'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 on 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.

It is not apparent from the charge how the Association's conduct was without a rational basis, devoid of honest judgment, discriminatory or in bad faith. It is true that the Association did not respond to you in writing, as it did to other employees (whose grievances also were not taken to arbitration), but there is no prima facie showing that this conduct was based on an illegitimate or impermissible reason.

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 that 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 September 11, 1991, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3127.

Sincerely,

Thomas J. Allen
Regional Attorney