

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



AUDREY B. VIGIL,)
)
 Charging Party,) Case No. LA-CO-569
)
 v.) PERB Decision No. 934
)
 UNITED TEACHERS-LOS ANGELES,) May 19, 1992
)
 Respondent.)
 _____)

Appearances: Ken Cameron, Attorney for Audrey B. Vigil; Taylor, Roth, Bush & Geffner by Jesus E. Quinonez, Attorney, for United Teachers-Los Angeles.

Before Hesse, Chairperson; Camilli and Carlyle, Members.

DECISION AND ORDER

HESSE, Chairperson: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Audrey B. Vigil (Vigil) of a Board agent's dismissal, attached hereto, of her charge that the United Teachers-Los Angeles (UTLA) violated section 3543.6(b) of the Educational Employment Relations Act (EERA)¹ by failing to satisfy its 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.

In the appeal, Vigil asserts that UTLA has not provided her with a reason for its denial of her request to pursue her grievances to arbitration. Vigil asserts that this is evidence

¹EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

that UTLA's conduct in denying her request was arbitrary, discriminatory and in bad faith.

In the warning and dismissal letters, the Board agent correctly found that neither this conduct nor any other conduct alleged in the charge constitutes arbitrary, discriminatory or bad faith conduct in violation of the duty of fair representation. (Corona-Norco Teachers Association (Paloma) (1991) PERB Decision No. 909.)

The unfair practice charge in Case No. LA-CO-569 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Camilli and Carlyle 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



January 10, 1992

Ken Cameron

Re: DISMISSAL AND REFUSAL TO ISSUE COMPLAINT, Unfair
Practice Charge No. LA-CO-569, Audrey B. Vigil v.
United Teachers - Los Angeles

Dear Mr. Cameron: _____

I indicated to you in my attached letter dated January 2, 1992, 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 January 9, 1992, the charge would be dismissed.

On January 9, 1992, I received from you a letter contending that an amended charge is unnecessary, on the basis of arguments that had been previously made and considered. The charge has not been amended or withdrawn. I am therefore dismissing the charge based on the facts and reasons contained in my January 2 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

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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

Thomas J. Allen
Regional Attorney

Attachment

cc: Jesus Quinones

PUBLIC EMPLOYMENT RELATIONS BOARD



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



January 2, 1992

Ken Cameron

Re: WARNING LETTER, Unfair Practice Charge No. LA-CO-569,
Audrey B. Vigil v. United Teachers - Los Angeles

Dear Mr. Cameron: _____

In the above referenced charge, Charging Party Audrey B. Vigil (Vigil) alleges that United Teachers - Los Angeles (UTLA) violated its duty of fair representation under Government Code section 3544.9 of the Educational Employment Relations Act (EERA).

My investigation of the charge reveals the following facts.

Vigil is employed by the Los Angeles Unified School District (District) in a unit for which UTLA is the exclusive representative. On January 17, 1991, Vigil received a letter of reprimand from her supervisor. Vigil filed a grievance, alleging violations of Article X, Section 11.0, of the collective bargaining agreement, which concerns "Notices of Unsatisfactory Service or Act, and Suspension." The District denied the grievance, stating, "Based on judicially confirmed awards, letters of reprimand are not grievable."

On January 24, 1991, Vigil was transferred from one Children's Center to another. Vigil filed a second grievance, alleging a violation of Article XI, Section 2.0, which provides that the District may transfer employees "when such action is deemed to be in the best interest of the educational program of the District." Vigil stated, "Grievant feels this [her transfer] is not in the best interest of the educational program." The District denied this grievance as well, stating, "Administrative transfers are permitted under the provisions of the collective bargaining agreement, Article XI, section 2.0."

Vigil presented her two grievances to the UTLA Grievance Review Committee. Her attorney was not allowed to participate. On June 17, 1991, UTLA informed Vigil by letter, "After giving full consideration to all information available to the committee, we have decided not to arbitrate." The letter did not give reasons for the decision.

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Meanwhile, on May 3, 1991, Vigil received a Final Evaluation Report ("Stull") which was generally favorable but also included some negative comments and identified some skills as needing improvement. It is alleged, "On June 3, 1991, Vigil filed a grievance regarding the Stull evaluation which was orally denied by [UTLA Area Representative Dot] DeLeon; UTLA never wrote a reply or took the grievance to arbitration." The grounds for the grievance are not apparent. Article X, Section 6.3, provides in part as follows:

Evaluations are not subject to the grievance procedures of Article V, except when the final overall evaluation is "Below Standard." However, if the overall evaluation is "Meets Standards" but there is a significant disparity between that rating and the negative comments on the form, the evaluation shall be subject to the grievance procedure on the same basis as it would have been had the overall rating been Below Standard.

It is also not apparent whether the District responded to the grievance, or whether Vigil presented the grievance to the UTLA Grievance Review Committee.

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

Charging Party Vigil has alleged that the exclusive representative UTLA denied Charging Party the right to fair representation guaranteed by EERA section 3544.9 and thereby violated EERA section 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 UTLA's conduct was without rational basis, devoid of honest judgment, discriminatory or in bad faith. The charge sets forth the proposition that UTLA's duty of fair representation "included a duty to arbitrate the dispute or to give a sufficient reason for not arbitrating." Although I requested authority supporting this proposition, none has been provided. On the contrary, the cases quoted above indicate that the burden is on a Charging Party to show how the exclusive representative abused its discretion, and not on the exclusive representative to show how it properly exercised its discretion.

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

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January 9, 1992, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3127.

Sincerely,

Thomas J. Allen
Regional Attorney