

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LEONARD A. BACON,)	
)	
Charging Party,)	Case No. LA-CO-42-H
)	
v.)	PERB Decision No. 1051-H
)	
CALIFORNIA FACULTY ASSOCIATION,)	August 16, 1994
)	
Respondent.)	
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Appearances; Leonard A. Bacon on his own behalf; Rothner, Segall & Bahan by Glenn Rothner, Attorney, for California Faculty Association.

Before Blair, Chair; Caffrey and Carlyle, Members.

DECISION AND ORDER

BLAIR, Chair: This case is before the Public Employment Relations Board (Board) on appeal filed by Leonard A. Bacon (Bacon) of a Board agent's dismissal (attached hereto) of his unfair practice charge. In his charge, Bacon alleged that the California Faculty Association (CFA) denied him the right to fair representation in violation of section 3571.1 of the Higher Education Employer-Employee Relations Act (HEERA).¹

¹HEERA is codified at Government Code section 3560 et seq. Section 3571.1 states, in pertinent part:

It shall be unlawful for an employee organization to:

(e) Fail to represent fairly and impartially all the employees in the unit for which it is the exclusive representative.

The Board has reviewed the warning and dismissal letters,² Bacon's original and amended charge and his appeal, CFA's response thereto and the entire record in this case. The Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself.

The unfair practice charge in Case No. LA-CO-42-H is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Caffrey and Carlyle joined in this Decision.

²The warning and dismissal letters should reference HEERA section 3571.1(e).

PUBLIC EMPLOYMENT RELATIONS BOARD



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



January 7, 1994

Professor Leonard A. Bacon

Re: DISMISSAL AND REFUSAL TO ISSUE COMPLAINT, Unfair Practice
Charge No. LA-C0-42-H, Leonard A. Bacon v. California
Faculty Association

Dear Professor Bacon:

In the above-referenced charge, filed on November 2, 1993, you allege that the California Faculty Association (CFA) denied you the right to fair representation. This conduct is alleged to violate Government Code section 3571.1(b) of the Higher Education Employer-Employee Relations Act (HEERA).

I indicated to you, in my attached letter dated December 28, 1993, 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. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to January 6, 1994, the charge would be dismissed.

On January 5, 1994, you filed (by certified mail) an amended charge. The amended charge alleges in relevant part that, contrary to the statement in my December 28 letter, your 4/19/91 grievance received a Level II response earlier than your 12/20/91 grievance. The amended charge speculates, "What CFA did was switch the grievance that was up for arbitration, putting up the least important one, and not informing me."

It does appear from the amended charge that there has been misunderstanding and miscommunication on this subject, even between the two of us.¹ It does not appear from the alleged facts, however, that CFA engaged in deliberate conduct that was

¹Unlike you, I understood from CFA representative Donald W. Nielsen in 1992 that CFA had made a decision to arbitrate your 12/20/91 "post-tenure review" grievance, and had so notified CSU, but that the decision was not final or irrevocable. I believed that you had the same understanding.

arbitrary, discriminatory, or in bad faith.²

The remainder of the amended charge consists of information that either is not new or is not relevant to your allegation that CFA violated its duty of fair representation within the six months prior to the filing of the charge. I am therefore dismissing the charge, based on the facts and reasons contained in this letter and in my December 28 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. (Cal. 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 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. (Cal. 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 (20) calendar days following the date of service of the appeal. (Cal. 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 Cal. Code of Regs., tit. 8, sec. 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally

²It does not appear from any of the alleged facts how CFA would be able to "switch" grievances on you and CSU, or how it could hope to conceal from you which grievance was going to arbitration, or why it would deliberately try to do either of these things. It also does not appear why any of this is especially significant, given that CFA has not decided against arbitrating the 4/19/91 grievance that is important to you.

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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 (3) 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. (Cal. 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,

ROBERT THOMPSON
Deputy General Counsel

By Thomas J. Allen
Regional Attorney

Attachment

cc: Glenn A. Rothner, Esq.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



December 28, 1993

Professor Leonard A. Bacon

Re: WARNING LETTER, Unfair Practice Charge No. LA-CO-42-H,
Leonard A, Bacon v. California Faculty Association

Dear Professor Bacon:

In the above-referenced charge, filed on November 2, 1993, you allege that the California Faculty Association (CFA) denied you the right to fair representation. This conduct is alleged to violate Government Code section 3571.1(b) of the Higher Education Employer-Employee Relations Act (HEERA).

My investigation of this charge reveals the following relevant facts.

You are employed by the California State University (CSU) in a unit for which CFA is the exclusive representative. You filed grievances against CSU on April 19, 1991 (4/19/91) and December 20, 1991 (12/20/91). In July 1993, CFA sent you a settlement offer from CSU, which you found unacceptable. In August 1993, CFA informed you that your "first grievance" would go to arbitration in December 1993. You understood that your 4/19/91 grievance was set for arbitration, when in fact it was your 12/20/91 grievance, which had received a Level II response earlier than the 4/19/91 grievance. CFA had not made a decision on the arbitration of your 4/19/91 grievance.

You allege that in June through October, 1993, CFA was slow in returning your calls, providing you with forms and information, and meeting with you. You allege that you have additional evidence against CFA, but you have not provided it to me.

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

As Charging Party, you have alleged that CFA, as the exclusive representative, denied you the right to fair representation guaranteed by HEERA section 3578 and thereby violated section 3571.(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.)

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In order to state a prima facie violation of this section of HEERA, 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), the Public Employment Relations Board 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.
[Citations.]

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, p. 9, citing Rocklin Teachers Professional Association (Romero) (1980) PERB Decision No. 124.]

At worst, it appears from the charge that CFA has not communicated with you as well as it might have, and that it has not been as responsive to your desires as you would like. It does not appear that CFA has been negligent in representing you, but even that would not be enough for a prima facie violation. It certainly does not appear that CFA's conduct has been arbitrary, discriminatory or in bad faith.

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 additional facts which would correct the deficiencies explained above, please amend the charge. 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

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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 January 6, 1994, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3127.

Sincerely,

Thomas J. Allen
Regional Attorney