



STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD

GEORGE VLADIMIR MRVICHIN,	)	
	)	
Charging Party,	)	Case No. LA-CO-625
	)	
v.	)	PERB Decision No. 1132
	)	
AMERICAN FEDERATION OF TEACHERS	)	January 11, 1996
COLLEGE STAFF GUILD, LOCAL 1521,	)	
CFT/AFT, AFL-CIO,	)	
	)	
Respondent.	)	

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Appearances; George Vladimir Mrvichin, on his own behalf;  
Lawrence Rosenzweig, Attorney, for American Federation of  
Teachers College Staff Guild, Local 1521, CFT/AFT, AFL-CIO.

Before Garcia, Johnson and Dyer, Members.

DECISION AND ORDER

DYER, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by George Vladimir Mrvichin (Mrvichin) to a PERB administrative law judge's (ALJ) proposed decision (attached). In his decision, the ALJ dismissed the complaint and unfair practice charge in which Mrvichin alleged that the American Federation of Teachers College Staff Guild, Local 1521, CFT/AFT, AFL-CIO (Guild) breached its duty of fair representation guaranteed by section 3544.9 of the Educational Employment Relations Act (EERA), thereby violating EERA section 3543.6(b),<sup>1</sup> when it failed to assist Mrvichin with

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<sup>1</sup>**EERA** is codified at Government Code section 3540 et seq. Section 3544.9 states:

The employee organization recognized or certified as the exclusive representative for the purpose of meeting and negotiating shall

his grievances and when it refused to represent him in his dismissal proceedings before the personnel commission.

The Board has reviewed the entire record in this case, including the proposed decision, transcript, exhibits, Mrvichin's exceptions and the Guild's response thereto. The Board finds the ALJ's findings of fact and conclusions of law to be free of prejudicial error and adopts them as the decision of the Board itself.

The complaint and unfair practice charge in Case No. LA-CO-625 are hereby DISMISSED.

Members Garcia and Johnson joined in this Decision.

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fairly represent each and every employee in the appropriate unit.

EERA 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.



STATE OF CALIFORNIA  
PUBLIC EMPLOYMENT RELATIONS BOARD

GEORGE VLADIMIR MRVICHIN,	)	
	)	
Charging Party,	)	Unfair Practice
	)	Case No. LA-CO-625
v.	)	
	)	PROPOSED DECISION
	)	(4/28/95)
AMERICAN FEDERATION OF TEACHERS	)	
COLLEGE STAFF GUILD, LOCAL 1521,	)	
CFT/AFT, AFL-CIO,	)	
Respondent.	)	
_____	)	

Appearances: Charles A. Goldwasser and Corey W. Glave, Attorneys, for George Vladimir Mrvichin; Lawrence Rosenzweig, Attorney, for American Federation of Teachers College Staff Guild, Local 1521, CFT/AFT, AFL-CIO.

Before Allen R. Link, Administrative Law Judge.

INTRODUCTION

In 1992 and 1993, George Vladimir Mrvichin (Mrvichin), an employee of the Los Angeles Community College District (District), filed a series of grievances. The American Federation of Teachers College Staff Guild, Local 1521, CFT/AFT, AFL-CIO (Guild) is the exclusive representative for the District's technical/clerical bargaining unit. Mrvichin contends that although the Guild initially represented him on some of his grievances, it eventually refused to take them to arbitration. He insists that such conduct was arbitrary, discriminatory or in bad faith, and therefore, in violation of its duty of fair representation. He also alleges that the Guild failed to represent him with regard to the District's attempt to terminate him.

This proposed decision has been appealed to the Board itself and may not be cited as precedent unless the decision and its rationale have been adopted by the Board.

The Guild states that it properly represented Mrvichin with regard to the subject grievances, but that the grievances were aimed at alleged defects in manner in which the District implemented its sexual harassment policy. Once the charges were withdrawn the grievances became moot and there was nothing left to arbitrate.

With regard to his termination, the Guild contends that it has no obligation under the applicable statutes, PERB case law, or the provisions of the parties' collective bargaining agreement (CBA) to represent an employee in dismissal proceedings. To the extent that the Guild initially volunteered to represent him, the subsequent withdrawal of such representation was due to Mrvichin's failure to cooperate and insistence upon making unilateral and counterproductive contacts with District officials.

#### PROCEDURAL HISTORY

On February 15, 1994, Mrvichin filed an unfair practice charge with the Public Employment Relations Board (PERB or Board) against the Guild alleging violations of subdivisions (a), (b) and (c) of section 3543.6 of the Educational Employment Relations Act (EERA or Act).<sup>1</sup>

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<sup>1</sup>EERA is codified at Government Code section 3540 et seq. All section references, unless otherwise noted, are to the Government Code. Subdivision (a), (b) and (c) of section 3543.6, in pertinent part, state:

It shall be unlawful for an employee organization to:

On April 22, 1994, the case was placed in abeyance. On September 8, 1994, the abeyance was terminated at the request of the charging party.

On September 14, 1994, after an investigation of the charge, PERB's Office of the General Counsel issued a complaint alleging violations of subdivision (b) of section 3543.6. On October 7, 1994, an informal conference was held in an attempt to reach voluntary settlement. No settlement was reached.

A formal hearing was held by the undersigned on February 14, 1995. Each side filed post-hearing briefs, with the last brief being filed on April 19, 1995. The case was submitted for a proposed decision at that time.

#### FINDINGS OF FACT

##### Jurisdiction

It is found that Mrvichin is a public school employee and the Guild is an employee organization and an exclusive representative within the meaning of the Act.

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(a) Cause or attempt to cause a public school employer to violate Section 3543.5.

(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.

(c) Refuse or fail to meet and negotiate in good faith with a public school employer of any of the employees of which it is the exclusive representative.

## Background

Mrvichin was East Los Angeles City College's (ELACC or college) athletic trainer in 1992 when the school administration decided to terminate its football program. He was a vociferous leader of the anti-termination group, and he filed several grievances against the proposal. These grievances, and the manner in which they were pursued, incurred the wrath of the school administration. In late 1992 he was charged with the sexual harassment of one of his female student-trainers. He filed numerous grievances complaining about the manner in which the sexual harassment procedure was implemented. The grievances were very technical and dealt with alleged time line violations and/or were based on Mrvichin's very strict interpretation of the applicable regulations.

Later, after he was terminated, in part due to the sexual harassment charge, Mrvichin filed (1) an appeal of his termination with the District's Personnel Commission, charging the termination was substantively unjustified, and (2) an unfair practice charge with PERB, alleging he was terminated due to his exercise of rights protected by the EERA. With the assistance of legal counsel, other than the one retained by the Guild, he won both cases.

## Mrvichin's First Contact With the Guild

Shortly after he filed his sexual harassment grievances he met with the Guild's assistant executive secretary for grievances, Donald Santoianni (Santoianni). Mrvichin believed

Santoianni did not feel that he (Mrvichin) was very knowledgeable about preparing grievances. It was very clear to Mrvichin that Santoianni "wanted to take full control of the writing of the grievances from that point forward." The Guild agreed to represent him in his defense to the sexual harassment charges and on March 9, 1993, had him sign a routine "power of representation" agreement. This agreement included the following statement:

I further agree that I will take no action independent of my AFT representative without first conferring with the AFT and rescinding this authorization.

The Guild has always insisted that grievants not independently contact the District administration. This is to permit the Guild to evaluate and control all employee "grievance" information going to the college.

#### Sexual Harassment Grievances

In furtherance of Mrvichin's grievances both Santoianni and Sandra Lepore, the Guild's executive secretary, consulted with Lawrence Rosenzweig (Rosenzweig), its attorney, and attended several meetings with Mrvichin and several college officials, such as Ron Dyste (Dyste), dean of student services, and Rose Najar (Najar), the sexual harassment policy compliance officer. These meetings covered such diverse subjects as earned compensatory time off, workers' compensation filing, and settlement offers from the involved student.

Barbara Kleinschmitt (Kleinschmitt), the Guild's president and chief executive officer, was having a difficult time trying

to get Mrvichin to stop filing additional grievances which were very technical and did nothing more than delay the natural progression of the sexual harassment procedure and negatively polarize the involved administration officials, such as Dyste and Najar. He was reluctant to take her advice, stating that he was a student, faculty member and a technical employee and that therefore, he could file a grievance in any of these three capacities. She told him that any grievances he filed in his other capacities had nothing to do with her or the Guild. However, with regard to the grievances he filed as a technical employee, and for which he was requesting representation, she wanted him to consult with the Guild prior to any new filing(s).

Mrvichin believed his grievances were ignored by both the Guild and the District and were subsumed within the substance of the sexual harassment charge and defense.

On June 22, 1993,<sup>2</sup> Lepore met with Mrvichin, the complaining student, her attorney, and Najar, to discuss settlement. She recommended Mrvichin reject the attorney's proposed settlement as it required him to agree to specified admissions. The settlement offer was rejected.

On June 25 Lepore, in a telephone conversation with Mrvichin, specifically asked for, and obtained, an agreement from him that he would not file any more grievances without the knowledge of the Guild. She was frustrated because his

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<sup>2</sup>Hereafter all date references, unless otherwise noted, are to 1993.



grievances were aimed at stopping the progress of the sexual harassment procedure. She wanted this procedure to move forward as she believed that in its fourth step, an evidentiary hearing, he would be found "not guilty."

Eventually the charges were withdrawn. Once this occurred there was no need for further representation as the grievances became moot. However, the withdrawal only occurred after ELACC paid the student a substantial amount of money.

#### Termination Procedures

On August 18 Mrvichin was told he would be given papers terminating him at a meeting the next day. Later that day he became ill with chest pains and was taken to a nearby hospital. He had suffered a severe anxiety attack and was not able to attend the meeting. He notified Santoianni of the problem and asked for assistance. Santoianni agreed to go to the meeting, but it was cancelled due to Mrvichin's illness and absence.

Later, when he was at home under medical care (his doctor recommended that he refrain from stressful situations), he asked the Guild to intercede with the college to obtain a postponement of the rescheduled pre-termination hearing. The Guild requested such a postponement and the request, on a limited basis, was granted.

On August 27, Mrvichin wrote the Guild requesting specified documents. He ended his letter with a request for an "understanding" regarding the "considerable expenses, eg mileage,

telephone, FAX, etc. in the preparation and processing of our defence [sic] in this matter." (Emphasis added.)

On August 30, Anne Mrvichin, charging party's wife, sent letters "to a number of individuals to enlist their character assessment" of her husband.<sup>3</sup> She did not notify the Guild prior to sending out such requests.

On September 10, Mrvichin filed a charge of discrimination against the college with the federal Equal Employment Opportunity Commission (EEOC), alleging his termination was due to racial discrimination, i.e., he was a Caucasian being discriminated against by Hispanics. He did not notify the Guild prior to filing this charge.

#### Request for Specific Representation Agreement

In early September Mrvichin agreed to a September 13 meeting with Rosenzweig to discuss both potential defense testimony and evidence and the problems caused by his continuing independent action(s). Mrvichin neither attended nor cancelled the meeting.

On September 16, Rosenzweig wrote a letter to Mrvichin stating

. . . the Guild has been concerned about actions you have taken without consultation with the Guild. . . .

If you expect the Guild to represent you, we expect you to consult and cooperate with the Guild. If you intend to act on your own,

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<sup>3</sup>During the period of time that Mrvichin was at home under doctor's care the flow of correspondence did not diminish. He explained that although he was unable to prepare these papers his wife did it for him.

then you do not need representation from the Guild.

Frankly, both the Guild and I have serious doubts about whether you are going to accept our advice and representation. Therefore, I am enclosing a representation agreement<sup>[4]</sup> which lists the conditions under which the Guild will undertake to represent you. If you want us to represent you, and you are willing to accept the conditions in the Agreement, please sign the Agreement and return it to me . . . .

If you decide that you do not want to sign the Agreement, neither I nor the Guild will represent you. If you feel you cannot sign the Agreement, I recommend that you hire an attorney immediately.

Mrvichin insists that it was through this letter that he first learned that the Guild was upset with his taking independent action(s). He insists that after receipt of this letter, he no longer engaged in such behavior. However, he also failed to sign the proposed representation agreement.

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<sup>4</sup>The proposed representation agreement would have required Mrvichin to (1) consult with the Guild before filing any grievances, (2) obtain the Guild's approval before contacting any District employee or administrator, (3) obtain the Guild's approval before initiating any legal proceedings against the District, (4) cooperate with the Guild in scheduling and attending meetings, and (5) be truthful with the Guild at all times.

The agreement concluded with the Guild retaining the right to withdraw from representing Mrvichin in the event that he violated the agreement, failed to cooperate with the efforts of the Guild to represent him, or took "any actions which are inconsistent with the representation efforts of the Guild . . . ."

### Mrvichin's Continuing Independent Actions

On September 17, Elaine Kindle (Kindle) Mrvichin's psychologist wrote the District notifying it that he was "not able to participate in a response to charges" against him. He did not notify the Guild prior to requesting that Kindle send such a letter, although it was sent a copy.

On September 17, Mrvichin wrote Herbert C. Spillman, assistant director, staff relations, Employer-Employee Relations Branch, Division of Human Resources of the District, stating that Omero Suarez, president of ELACC, was prejudiced against him and that this should disqualify him as the pre-termination hearing officer.

On September 18, Mrvichin caused a letter to be sent to Erlinda N. DeOcampo, the college's fiscal administrator, complaining about "illness or injury cards" which were returned to his home. They arrived in such a manner, according to him, as to interfere with the U.S. mail, which he pointed out was a federal offense. He did not notify the Guild prior to causing this letter to be sent, although it was sent a copy.

On September 21, Mrvichin caused a letter to be sent to Maria Elena Yepes, the college's new sexual harassment policy compliance officer, advising her that her response to a previous request from him and the Guild was overdue. He continued, stating that this delay "may represent a possible violation" of the District's sexual harassment policy, which in turn may result

in a violation of the CBA. He did not notify the Guild prior to sending this letter, although it was sent a copy.

On September 21, Mrvichin also caused a letter to be sent to Santoianni thanking him for sending copies of his personnel file and requesting that within ten days, three more grievances be filed on his behalf.

The Guild took its initial steps of Mrvichin's representation regarding his termination, even though it had no legal obligation to do so. The CBA makes it very clear, in Article 22, Section B.2., that the grievance procedure is not available for the adjustment of complaints relating to ". . . dismissals for which review procedures are provided by Personnel Commission rules."

#### Response to Request for Representation Agreement

Rather than signing Rosenzweig's representation agreement, Mrvichin sent him a letter on September 22 which stated, in pertinent part:

I would upon medical release, like to schedule an appointment with you to review and discuss the "Representation Agreement" and my case, at your convenience, in private, with the permission of the American Federation of Teachers College Staff Guild, Local 1521.

He continued with an explanation of the medical reasons he failed to attend the September 13 meeting, and concluded with a request:

Please include copies of all communications to both Sandra Lepore and Donald Santianni [sic] as implied in your letter, which is

attached by this reference, and please note that no carbon copies are referenced.

Mrvichin insists that the last paragraph was inserted as he had doubts as to whether Rosenzweig actually represented the Guild. He based these doubts on an absence of carbon copies to the Guild's leadership on Rosenzweig's September 16 letter. He also had some questions about the nature of the agreement itself,

His reference to a "private" meeting, he insists, was an attempt to lower the potential stress level of the meeting. He wanted to meet with Rosenzweig and Lepore and possibly Kleinschmitt, but without Santoianni. He found Santoianni's attitude "counterproductive."

#### Guild's Termination of Representation

Rosenzweig responded on September 24. That letter, in relevant part, states:

. . . As I indicated in my September 16, 1993 letter to you, neither I nor the Guild will represent you unless you sign the Representation Agreement I sent to you. Since you have not signed the Agreement, we are not going to represent you.

The Guild tried to represent you with respect to the sexual harassment claim against you and the pending suspension and dismissal by the District. However, for whatever reason, you create obstacles for yourself and the Guild. You prefer to file a constant barrage of hyper-technical grievances rather than deal with the more serious issue of protecting your job.

Because of your lack of cooperation and your pattern of evasive conduct, the Guild hereby withdraws from representation of you in all pending matters. . . .

You are in need of legal representation. You should hire an attorney as soon as possible.

Mrvichin's Response to Representation Termination

On September 26, Mrvichin wrote Kleinschmitt suggesting the Guild could be in violation of its statutory duty of fair representation. He suggested that as an alternative to either using Rosenzweig or denying him representation, the Guild should consider hiring Attorney Charles Goldwasser (Goldwasser), as an alternative. Mrvichin's wife had contacted Goldwasser shortly after August 18, as a possible legal representative for her husband's termination case.

After September 26, Mrvichin continued to file grievances. He estimates the number at somewhere between six and twelve; one of which was against the Guild. He submitted each of these grievances to Santoianni prior to filing them with the District.

ISSUE

Did the Guild fail to meet its duty of fair representation with regard to Mrvichin's grievances or termination, thereby violating subdivision (b) of section 3543.6?

CONCLUSIONS OF LAW

Standard for Duty of Fair Representation

In order to prove a violation of the duty of fair representation,<sup>5</sup> the charging party must show that the employee

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<sup>5</sup>The duty of fair representation is set forth in section 3544.9. It states:

The employee organization recognized or certified as the exclusive representative for the purpose of meeting and negotiating

organization's conduct was arbitrary, discriminatory or in bad faith. (Rocklin Teachers Professional Association (1980) PERB Decision No. 124 (Rocklin), citing precedent set by the National Labor Relations Board and affirmed by the U. S. Supreme Court in Vaca v. Sipes (1967) 386 U.S. 171 [64 LRRM 2369].)

The Board in Rocklin, affirmed this concept, as set forth in Griffin v. United Auto Workers (4th Cir. 1972) 469 F.2d 181 [81 LRRM 2485], as follows:

. . . A union must conform its behavior to each of these standards. First, it must treat all factions and segments of its membership without hostility or discrimination. Next, the broad discretion of the union in asserting the rights of its individual members must be exercised in complete good faith and honesty. Finally, the union must avoid arbitrary conduct. Each of these requirements represents a distinct and separate obligation, the breach of which may constitute the basis for civil action.

The repeated references in Vaca to "arbitrary" union conduct reflected a calculated broadening of the fair representation standard. [Citations.] Without any hostile motive of discrimination and in complete good faith, a union may nevertheless pursue a course of action or inaction that is so unreasonable and arbitrary as to constitute a violation of the duty of fair representation. . . .

#### Allegations Regarding Grievance Representation

Charging party insists, in its briefs, that the Guild did little more than read over the grievances. However, the evidence shows that its representatives attended several meetings with a

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shall fairly represent each and every employee in the appropriate unit.



number of college officials, including Dyste and Najjar. Santoianni, Lepore and Kleinschmitt all had direct contact with Mrvichin, and were personally active in contacts with the college officials as well as counseling Mrvichin with regard to the sexual harassment charge grievances.

Mrvichin, in his brief, insists that the only way to clear his name was to proceed to the final stage of the college's sexual harassment procedure, an evidentiary hearing. He complains that the Guild never pushed for such a hearing. However, none of the grievances Mrvichin filed, both as a student and as an employee, requested that a hearing be held. To the contrary, most requested an immediate cessation of the process on questionable procedural grounds and/or that the student or the college processing official, Najjar, be reprimanded and admonished. These grievances, on their face, were not designed to expedite the process, but rather to delay and obstruct it.

In his charge, Mrvichin complains of the Guild's failure to take his grievances to arbitration. However, the grievances for which the Guild represented him were aimed at perceived defects in the college's implementation of its sexual harassment policy. Once the sexual harassment charge was withdrawn, there was no point in further litigation of the grievances.

There was insufficient evidence proffered at the hearing to show that the Guild acted in an arbitrary, discriminatory or bad faith manner when it represented Mrvichin with regard to his sexual harassment policy grievances.

Allegations re Employment Termination Representation

Mrvichin next complains of the Guild's September 24 cessation of its representation of him regarding his dismissal. However, the CBA is quite clear that "dismissals for which review procedures are provided by Personnel Commission rules" are outside of the scope of the CBA's grievance procedure. In Los Rios College Federation of Teachers (1993) PERB Decision No. 992, PERB stated:

The duty of fair representation does not extend to a forum that has no connection with collective bargaining, . . . 'There is no duty of fair representation owed to a unit member unless the exclusive representative possesses the exclusive means by which such employee can obtain a particular remedy. . . .' California State Employees' Association (Darzins) (1985) PERB Decision No. 546-S.

There is no doubt that the Personnel Commission and its rules are outside of the collective bargaining process and the exclusive representative does not possess the exclusive means by which an employee can obtain a particular remedy. The Guild, therefore, had no duty to represent Mrvichin before the Personnel Commission.

However, Mrvichin insists that once the Guild voluntarily undertook representation it had a duty to maintain such representation at a level that did not violate its duty of fair representation. Mrvichin cites no authority for this proposition. Moreover, even if a union incurs an obligation to fairly represent when acting in a voluntary capacity, the Guild's actions here were not arbitrary, discriminatory or in bad faith.

The Guild admittedly started to represent Mrvichin with regard to his termination. Only after it was unable to convince Mrvichin to allow it to control the representation process, did the Guild terminate its services.

Mrvichin insists that prior to Rosenzweig's letter of September 16 he was unaware the Guild was upset with his taking independent action(s). However, by his own admission, when he first went to the Guild he knew that Santoianni "wanted to take full control of the writing of the grievances from that point forward." This was in addition to the "power of representation" agreement that he signed in March in which he agreed to "take no action independent of my AFT [Guild] representative without first conferring . . . ."

In addition to Santoianni's initial comments, Mrvichin had conversations with both Kleinschmitt and Lepore in which he was told that they were not pleased with the grievances he was filing. On June 25 he agreed with Lepore that he would not file any more grievances without the knowledge of the Guild.

Even though he knew, or should have known, that the Guild should be previously consulted, he nonetheless unilaterally made a series of contacts with District officials in August and September.

On August 30 Mrvichin instructed his wife to send out letters soliciting character "assessments" without previously discussing the matter with the Guild. The letters may have been a good idea. The problem lies not in the content of the letters,

but in Mrvichin's unilateral action. The Guild cannot be expected to represent someone who is constantly taking independent action and refuses to consult with it prior to such action.

On September 10 he filed an EEOC charge without previously discussing the matter with the Guild. Certainly Mrvichin has a right to file an EEOC charge. However, the Guild should have been given the right to consult on the matter with regard to the impact such charge, which alleges an entirely different and potentially conflicting reason for his termination, would have on his case.

He agreed to attend a September 13 meeting with Rosenzweig to discuss both his termination case and his independent action(s). When he failed to attend the meeting, Rosenzweig made it very clear, on September 16, that if he failed to let the Guild have control over the case, it would terminate its representation of him.<sup>6</sup>

And yet, on the very next day, without the knowledge or consultation of the Guild, his psychologist wrote the District. On the same day he wrote another District official suggesting

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Mrvichin complains, in his closing brief, that this "expanded" representation agreement was evidence of the Guild's attempt to treat him in an arbitrary and discriminatory manner. However, it was Mrvichin's conduct that created the necessity for the expanded agreement. If he had consulted with the Guild prior to his contacts with District officials, there would have been no need for such expansion. The Guild reacted to Mrvichin's behavior by providing him with a second chance. It provided a more clearly defined agreement - one in which his rights and obligations were specifically set forth. Mrvichin chose not to sign the document. He did so at his peril.

that the ELACC president be disqualified as his pre-termination hearing officer due to anti-Mrvichin prejudice. Even if such prejudice were true, a suggestion of that sort is a risky one and is a decision upon which the Guild should have been consulted.

On September 18 Mrvichin wrote another college official complaining about her having committed a possible federal offense. Although this matter had no direct impact on Mrvichin's termination, it is symptomatic of the problem the Guild was having with Mrvichin. At the same time it was trying to portray him as a logical, responsible, reasonable human being who was unjustly charged with sexual harassment, he was accusing a college official of having committed a federal crime over mailing procedures.

On September 21 he wrote a third college official suggesting she may have been responsible for a CBA violation due to her alleged failure to provide materials to Mrvichin in a timely manner.

On the same day he wrote the Guild asking that three more grievances be filed within ten days. The next day he wrote Rosenzweig and at the same time he was expressing doubts that he (Rosenzweig) actually represented the Guild, he was requesting a private meeting with him - a meeting that would exclude at least one of the Guild's staff members. This requested exclusion was purportedly due to Mrvichin's belief that this staff member's attitude was "counterproductive."

All of this correspondence came from a member of the Guild who had previously sent a thinly disguised request for expenses that he had been incurring in his own defense.

Mrvichin was told on four separate occasions that he was to consult with the Guild prior to any independent action: (1) in the initial standard representation agreement he signed for Santoianni; (2) in a conversation with Kleinschmitt; (3) as a part of an agreement that he had with Lepore; and (4) by Rosenzweig's initial letter. He ignored these requests and agreements and continued to take action without consulting with the Guild. Granted, he did not refuse to sign the expanded representation agreement. However, within five days after Rosenzweig sent it to him he caused five additional contacts to be made with college administrators. He did not refuse to sign the document, but he certainly made it very clear that was not going to follow its provisions.

It is understandable that Mrvichin would take any and all measures available to protect his job. However, once he went to the Guild for representation it was incumbent on him to consult with the Guild's professionals prior to taking any actions or making any contacts with District officials. Most of the actions he was taking were of little real value to his sexual harassment case and more than likely would create a very negative attitude towards him and his case. No union can operate effectively if its client is taking independent action(s) at the same time a solution with the employer is being pursued.

Certainly, Mrvichin had every right, if he believed the Guild was not acting in his best interests, to terminate the representative relationship. By the same token, the Guild had a corresponding right to withdraw its representation if it felt that its client was not following its advice and was acting independently in such a manner as to effectively undermine that representation process.

An examination of the foregoing dictates a conclusion that the Guild's termination of representation of Mrvichin was not arbitrary, discriminatory or in bad faith.

#### Summary

It is determined that the Guild did not violate its duty of fair representation with regard to either Mrvichin's sexual harassment grievances or termination.

#### PROPOSED ORDER

Based on the foregoing findings of fact, conclusions of law and the entire record in this case, it is found that the American Federation of Teachers College Staff Guild, Local 1521, CFT/AFT, AFL-CIO did not violate subdivision (b) of section 3543.6 of the Educational Employment Relations Act. It is ORDERED that all aspects of the charge and complaint in this case are hereby DISMISSED.

Pursuant to California Code of Regulations, title 8, section 323 05, this Proposed Decision and Order shall become final unless a party filed a statement of exceptions with the Board itself at the headquarters office in Sacramento within twenty days of

service of this Decision. In accordance with PERB Regulations, the statement of exceptions should identify, by page citation or exhibit number, the portions of the records, if any, relied upon for such exceptions. (See Cal. Code of Regs., tit. 8, sec. 32300.) A document is considered "filed" when actually received before the close of business (5:00 p.m.) on the last day set for filing. . .or when sent by telegraph or certified or Express United States mail, postmarked no later than the last day set for filing. . ." (See Cal. Code of Regs., tit. 8, sec. 32315; Code Civ. Proc, sec. 1013.) Any statement of exceptions and supporting brief must be served concurrently with the filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed by the Board itself. (See Cal. Code of Regs., tit. 8, secs. 32300, 32305 and 32410.

**Allen R. Link**  
**Administrative Law Judge**