

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ANNETTE DEGLOW,)
)
 Charging Party,) Case No. SA-CO-387
)
 v.) PERB Decision No. 1241
)
 LOS RIOS COLLEGE FEDERATION OF)
 TEACHERS/CFT/AFT/LOCAL 2279,) December 9, 1997
)
 Respondent.)
 _____)

Appearances: Annette Deglow, on her own behalf; Law Offices of Robert J. Bezemek by Adam H. Birnhak, Attorney, for Los Rios College Federation of Teachers/CFT/AFT/Local 2279.

Before Caffrey, Chairman; Amador and Jackson, Members.

DECISION AND ORDER

CAFFREY, Chairman: This case is before the Public Employment Relations Board (Board) on appeal by Annette Deglow (Deglow) of a Board agent's dismissal (attached) of her unfair practice charge. In her charge, Deglow alleged that the Los Rios College Federation of Teachers/CFT/AFT/Local 2279 (Federation) breached the duty of fair representation guaranteed by section 3544.9 of the Educational Employment Relations Act (EERA) thereby violating EERA section 3543.6(b).¹

¹EERA 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 fairly represent each and every employee in the appropriate unit.

Section 3543.6 states, in pertinent part:

The Board has reviewed the entire record in this case including Deglow's original and amended unfair practice charge, the Board agent's warning and dismissal letters, Deglow's appeal and the Federation's response. 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. SA-CO-387 is DISMISSED WITHOUT LEAVE TO AMEND.

Members Amador and Jackson joined in this Decision.

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.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



September 24, 1997

Annette Barudoni Deglow

Re: Annette Deglow v. Los Rios College Federation of
Teachers/CFT/AFT/Local 2279
Unfair Practice Charge No. SA-CO-387
DISMISSAL LETTER

Dear Ms. Deglow:

You filed the above-referenced charge on March 20, 1997. You amended that charge on April 14, July 7, and on September 19, 1997. Essentially, you allege a violation of the duty of fair representation. We discussed this matter in my office on July 2, 1997.

I indicated to you, in my attached letter dated August 8, 1997, 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 August 15, 1997, the charge would be dismissed.

You were granted an extension of time in order to secure a copy of your testimony at the July 10, 1997 PERB Board meeting, and a copy of the document that you referenced in your testimony at that time. I received a copy of your third amended charge on September 19, 1997.

In that charge, you continue to disagree with the Los Rios Community College District (District) and Los Rios College Federation of Teachers' (LRCFT) interpretation of the collective bargaining agreement. You contend that you should not be required to work as an instructor for a thirty formula hour block (one full-time year equivalent) after placement on the step 13 salary level in order to move to step 14. You argue that you should be granted step 14 on the basis that you had accumulated more than twenty-four years of service credit by the start of the 1996-97 academic year. You contend that the contrary interpretation of the collective bargaining agreement does not compensate you adequately for service provided and will impact your retirement benefits. You believe that the union's

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interpretation of the collective bargaining agreement is motivated by your past protected activity, including the filing of unfair practice charges against the union. However, for the reasons stated in my letter of August 8, 1997, you have not demonstrated discrimination and this allegation must be dismissed.

The new information which you provided in your third amended charge regards an article written by Alan Frey, a community college consultant of the California Teachers Association (CTA). You state that you are an active member of a CTA affiliate, the Los Rios Teachers Association, CTA/NEA. The publication in which Mr. Frey's article appeared was delivered to your home.

CTA is a rival organization which has in the past attempted to decertify the LRCFT as the exclusive bargaining agent at the District. In the article, Frey is critical of certain actions taken by union leadership at several community colleges. At one point he states,

In yet another college, the union leadership became so obsessed with its hatred of a faculty member that it spent tens of thousands of dollars fighting the member rather than advocating on her behalf. In this case, the phenomenal amounts of money and time spent, could have, with the proper union attitude, resulted in a settlement of the issue years ago.

You state that Frey's office verified that in the above quotation, he was referencing your situation.

You contend that the substance of Frey's article: "demonstrates and documents that a **reasonable person** has in fact concluded that the Federation's refusal to represent Deglow in dealing with her employer is motivated by the Federation's need to impose sanction upon Deglow because of her exercise of protected EERA activities."

However, Frey's comments in the above article do not constitute new facts which demonstrate a violation of the duty of fair representation. Rather, they appear to be an opinion or criticism of an employee of a rival labor organization. Additionally, Frey's general remarks do not address the specific facts upon which this charge is based. Accordingly, they do not serve as the additional facts which would correct the deficiencies in your charge which were explained in my letter of

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August 8, 1997. For the reasons given in this letter and my letter of August 8, 1997, your charge must be dismissed.

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 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.)

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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

BERNARD MCMONIGLE
Regional Attorney

Attachment

cc: Adam Birnhak, Esquire

BMC:eke

PUBLIC EMPLOYMENT RELATIONS BOARD



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



August 8, 1997

Annette Barudoni Deglow

Re: Annette Deglow v. Los Rios College Federation of
Teachers/CFT/AFT/Local 2279
Unfair Practice Charge No. SA-CO-387
WARNING LETTER

Dear Ms. Deglow:

You filed the above-referenced charge on March 20, 1997. You amended that charge on April 14, and again on July 7, 1997. Essentially, you allege a violation of the duty of fair representation. We discussed this matter in my office on July 2, 1997.

On September 9, 1996, you contacted Personnel Services at the Los Rios Community College District (District) regarding your salary schedule placement and possible advancement from Class IV step 13 to step 14. On September 9, 1996, you received a letter from Mary T. Jones, Director of Personnel Services. In that letter, Jones referred you to Article 2 section 2.5 of the collective bargaining agreement between the District and the Los Rios College Federation of Teachers (LRCFT or Federation). She quoted section 2.5.4 which states:

As of July 1, 1996, step placement shall occur at the beginning of a semester following completion of the required thirty (30) formula hour block which has been achieved from the last effective date of step advancement.

Jones noted that your last step advancement was effective retroactive to the 1994/95 academic year and that your teaching load is forty percent (40%) of a full-time teaching position. Jones concluded that based on this part-time teaching schedule you would be eligible for placement on step 14 at the beginning of the spring 1997 semester. Jones stated, "At that time, you will have completed the equivalent of a one hundred percent (100%) assignment while on step 13."

On or about October 7, 1996, you filed a grievance asserting your right to placement on step 14 of the negotiated salary schedule that is part of the collective bargaining agreement between the Federation and the District. That agreement is

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effective July 1, 1996 to June 30, 1999. Article 2 Salaries states in relevant part:

Section 2.5.1 (previously section 3.1)
Regular faculty employees, part-time tenured employees, and temporary faculty employees employed by the District before July 1, 1980, and with continued employment and/or rights Fall Semester 1980, will retain step placement on the appropriate Salary Schedule A until additional step placement is earned in accordance with 2.5.3 or 2.5.4.

According to your charge, similar language is found in negotiated agreements dating back to at least 1980. During this entire time you have been a part-time tenured employee and the District has based your salary progression on your part-time status. You contend that the District is incorrect in its position that you do not qualify for step 14 of the salary schedule. You base this contention in part on your reading of a 1981 arbitration decision granting you a specific level of tenure for purposes of the salary schedule and a court decision from that same time frame which you state "validated the arbitration findings in favor of Deglow and against the District." You state that within the findings and decision of the arbitration award was a confirmation that, as of 1980, you were entitled to eighteen years of longevity steps. As of the 1994-95 school year you had 23.60 years of service credit.

You contend in your second amended charge that all certificated employees, regardless of their date of hire or their age and classification, should proceed through the salary schedule based on years of training and experience. You believe that based on your years of experience, you have an absolute right to the maximum step of the salary schedule until such time that the maximum step exceeds your total years of service credit.

You also contend that it is not true that all tenured track faculty must complete the equivalent of thirty (30) instructional hours on a step before advancing. An instructor new to the salary schedule can retain and transfer up to six (6) years of accumulated service credit/experience. A faculty member who moves from one class to another by virtue of increased education may advance multiple steps. You cite examples, in 1984 and 1985, wherein certain employees gained as many as nine steps at one time in advancement. By letter of October 9, 1996, you were informed by the LRCFT that it would represent you in the grievance. However, the

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Federation did state that it had not had an opportunity to analyze the grievance and that representation should not be construed to mean that the Federation believed that the grievance had merit. By letter of November 19, 1996, LRCFT stated that it would represent you at the District level grievance hearing. However, the Federation also stated that "unless new evidence was presented or new arguments were developed, the Federation believes that no contractual violations have occurred as a result of the District's action of not placing you on the new top of the Salary Schedule A. According to the agreement (Article 2, Section 2.5.3 and 2.5.4), all tenure track faculty must complete the equivalent of thirty instructional hours to be eligible for step placement service credit." The Federation also stated its belief that the 1981 Board of Review decision did not address your continuing placement on the maximum step of the Salary Schedule.

By letter of December 10, 1996, you were advised that the Federation's Executive Board would consider whether to move your grievance to a Board of Review (arbitration) in its December 11, 1996 meeting. At that meeting you had an opportunity to address the Executive Board and explain your position.

By letter of December 13, 1996, Robert Perrone, the Executive Director of the Federation, informed you that the Executive Board had voted not to take your grievance to a Board of Review. He explained the Federation's position that the 1981 Board of Review decision did not give you year for year service credit into perpetuity. He stated that service credits must be earned in conformity with the collective bargaining agreement language which covers part-time tenured faculty. He also explained why your arguments that the District had discriminated based on age, gender and race in applying the salary schedule did not have merit.

You again addressed the Federation Executive Board regarding this matter on January 29, 1997, providing in advance "a copy of the historical record." On March 26, 1997, you received a letter from the Federation indicating that the Executive Board had voted to uphold its decision not to take your grievance to a Board of Review for the reasons stated in the December 13, 1996 letter. You allege that this denial of the Board of Review violates the Federation's duty of fair representation.

The violation of the duty of fair representation occurs when an exclusive representative union exhibits arbitrary, discriminatory or bad faith conduct toward a union member in

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representing that member in a matter arising out of the collective bargaining relationship. (Sacramento City Teachers Association (Fanning) (1984) PERB Decision No. 428.) Accordingly, PERB will dismiss a charge that the duty of fair representation has been breached by a refusal to take a grievance to arbitration if the union makes a reasonable determination that the grievance lacks merit. (Los Angeles Unified School District (1985) PERB Decision No. 526.) In determining whether such a reasonable determination has been made the Board does not determine whether the union's assessment was correct, but only whether that determination had a rational basis or was based on reasons that were arbitrary or based upon invidious discrimination. (Sacramento City Teachers Association, supra.) Section 2.5, on its face, appears to grant part-time faculty the right to advance one step only after completing a thirty instructional hour block. Because you had not completed this amount of instruction while at step 13, the LRCFT believed you were not entitled to step 14. The Federation appears to have made a reasonable determination that your grievance lacked merit. Accordingly this allegation is dismissed.

You have not only alleged that LRCFT's action in this matter was unreasonable, but that in fact it is discriminatory based on your protected activity. It is true that you have engaged in protected activity by filing numerous unfair practice charges against the Federation over the years. However, to demonstrate illegal discrimination it must be demonstrated that the Federation was motivated by your protected activity. (See Novato Unified School District (1982) PERB Decision 210.) Such motivation can be inferred from circumstantial evidence such as timing plus disparate treatment of an employee. (Novato, supra.) However, in this case there has been no disparate treatment or other circumstantial evidence demonstrated by the Federation's refusal. No improper motive is demonstrated by the LRCFT's refusal to proceed to arbitration under a theory which it reasonably considers insupportable. Accordingly, this allegation must also be dismissed.

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 Third Amended Charge, contain all the facts and allegations you wish to make, and 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

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receive an amended charge or withdrawal from you before August 15, 1997, I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198, extension 355.

Sincerely,

Bernard McMonigle
Regional Attorney

BMC:eke