STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ANNETTE (BARUDONI) DEGLOW, Charging Party,	)	Case No. SA-CO-420
v.	)	PERB Decision No. 1349
LOS RIOS COLLEGE FEDERATION OF TEACHERS/CFT/AFT/LOCAL 2279, Respondent.	)	September 29, 1999

Appearance; Annette (Barudoni) Deglow, on her own behalf.

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

AMADOR, Member: This case is before the Public Employment Relations Board (Board) on appeal by Annette (Barudoni) Deglow (Deglow) to a Board agent's dismissal (attached) of her unfair practice charge. Deglow filed an unfair practice charge alleging that the Los Rios College Federation of Teachers/CFT/AFT/Local 2279 (Federation) breached its duty of fair representation in violation of section 3544.9 of the Educational Employment Relations Act (EERA).[1] The charge also alleged that the Federation interfered with her exercise of rights under EERA section 3543, thus violating EERA section 3543.6(b), when it

[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. EERA section 3544.9 provides:

> 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.

failed to challenge the Los Rios Community College District's (District) decision to evaluate her during the Spring of 1998. In addition, the charge alleges that the Federation caused or attempted to cause the District to violate EERA section 3543.6(a).[2]

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[2]EERA section 3543 states:

> Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Public school employees shall also have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the public school employer, except that once the employees in an appropriate unit have selected an exclusive representative and it has been recognized pursuant to Section 3544.1 or certified pursuant to Section 3544.7, no employee in that unit may meet and negotiate with the public school employer.
>
> Any employee may at any time present grievances to his employer, and have such grievances adjusted, without the intervention of the exclusive representative, as long as the adjustment is reached prior to arbitration pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8 and the adjustment is not inconsistent with the terms of a written agreement then in effect; provided that the public school employer shall not agree to a resolution of the grievance until the exclusive representative has received a copy of the grievance and the proposed resolution and has been given the opportunity to file a response.

EERA section 3543.6 states, in pertinent part:

> It shall be unlawful for an employee organization to:

After investigation, the Board agent dismissed the charge for failure to establish a prima facie case.

The Board has reviewed the entire record in this case, including the original and amended unfair practice charge, the Board agent's warning and dismissal letters, and Deglow's appeal. The Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. SA-CO-420 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Dyer joined in this Decision.

(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.

PUBLIC EMPLOYMENT RELATIONS BOARD

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

June 25, 1999

Annette (Barudoni) DeGlow

Re: Unfair Practice Charge No. SA-CO-420
Annette (Barudoni) DeGlow v. Los Rios College Federation of Teachers/CFT/AFT/Local 2279
DISMISSAL LETTER

Dear Ms. DeGlow:

The above-referenced unfair practice charge, filed August 27, 1998, alleges that the Los Rios College Federation of Teachers (Federation) breached the duty of fair representation guaranteed by EERA section 3544.9 and thereby violated section 3543.6(b) when it failed to challenge the Los Rios Community College District's (District) decision to evaluate charging party during the Spring of 1998.

I indicated to you, in my attached letter dated May 19, 1999, 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 May 26, 1999, the charge would be dismissed. At your request, I extended this deadline to June 15, 1999.

On June 15, 1999, you filed a third amended charge. You indicate that the purpose of the third amended charge is to provide additional documentation to demonstrate that the District and the Federation have accepted your work-related disability, to reiterate that the issues identified in your Fall 1997 evaluation were issues of academic freedom and that your subsequent reevaluation in the Spring of 1998 was a clear violation of the collective bargaining agreement (CBA) between the District and the Federation, to demonstrate a connection between your protected activity and the Federation's decision not to represent you, and to update the record regarding the damage caused by the Federation's decision not to represent you. The charge allegations and arguments are discussed below.

In 1984 or 1985, the Workers' Compensation Appeals Board determined that charging party had developed vocal cord nodules and sustained permanent damage as a result of and in the course of her employment. The charge asserts that both the District and

the Federation subsequently acknowledged the existence of this work-related disability. In 1991, the District provided charging party with a chalk-free classroom outfitted with a dry erase board and an overhead projector. Charging party has been assigned to teach Math 52 (Geometry) since at least 1991.

In the Fall of 1997, the District completed an evaluation of charging party's performance. That evaluation gave charging party an overall rating of "Needs Improvement." In addition, the evaluation committee recommended that the District not assign charging party to teach Math 52 until her depth of knowledge of geometry could be documented. The evaluation team recommended reevaluation in one year. In April of 1998, the Federation filed a grievance challenging the Fall 1997 evaluation on behalf of charging party.

In February of 1998, the District informed charging party that it intended to reevaluate her during the Spring of 1998. On February 26, 1998, the Federation informed charging party that it had asked the District to forego the Spring 1998 evaluation. On March 19 and 24, 1998, the District informed charging party that it intended to evaluate her during the Spring semester unless she had decided to forego the evaluation. Charging party responded to both District memoranda but did not elect to forego the evaluation.

The District evaluated charging party on March 23, March 25, and April 15, 1998. In a letter dated April 17, 1998, charging party sent the Federation draft grievances challenging the evaluations. In a letter dated April 20, 1998, the Federation informed charging party that it would not challenge the evaluations because the District had given charging party the option not to submit to the evaluations in Spring 1998. Since the evaluations were voluntary, the Federation indicated that it did not believe the grievances were appropriate. In addition, the Federation indicated that the grievances were not appropriate because the Spring 1998 evaluations had not resulted in any harm to charging party.

The charge alleges that the Federation breached the duty of fair representation guaranteed by EERA section 3544.9 and thereby violated 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) (1982) PERB Decision No. 258.) As I explained in greater detail in the attached warning letter, in order to state a prima facie violation of this section of EERA, Charging Party must show that the Federation's conduct was arbitrary, discriminatory, or in bad faith. (Id.)

The charge contends that the Spring 1998 evaluation was a clear violation, misapplication, or misinterpretation of the terms of the CBA and that the Federation's failure to represent charging party in grieving that violation amounted to an arbitrary and bad faith aiding and abetting the District's improper conduct. Nothing in the charge demonstrates that the Federation's actions were without a rational basis.

Charging party also argues that the original and amended unfair practice charges demonstrate that the Federation acted in a discriminatory manner when it refused to represent her grievance. In order to prevail on a discrimination theory, the charging party must establish that the employee was engaged in protected activity, that the activities were known to the employee organization and that the employee organization took adverse action against the employee because of the protected activity. (Novato Unified School District (1982) PERB Decision No. 210 at pp. 5-6 (Novato).) The Board has long recognized that, because motivation is a state of mind which may be known only to the actor, direct proof of unlawful motivation is rarely possible. (Carlsbad Unified School District (1979) PERB Decision No. 89 at p. 11.) Accordingly, the Board recognizes the following circumstantial indications of unlawful motivation: (1) the proximity of time between the protected activity and the adverse action; (2) disparate treatment of the affected employee(s); (3) departure from established procedures; (4) inconsistent or contradictory justifications for the employer's actions; and (5) inadequate investigation. (Novato at p. 7.)

Charging party asserts that the initial and amended charges "clearly outline acts of disparate treatment, departure from established procedures and standards, inconsistent or contradictory justifications for actions taken, cursory/no investigation, failure to offer justification for actions taken or the offering of exaggerated, vague or ambiguous reasons." This assertion appears to refer primarily to the allegations considered and rejected in the attached warning letter. However, charging party also alleges that there is "a clear correlation between" the Federation's decision not to represent her and a PERB complaint issued against the Federation on March 18, 1998. Temporal proximity is certainly indication of unlawful motive. (Moreland Elementary School District (1982)PERB Decision No. 227 at 13.) Timing alone, however, is not sufficient to create the requisite nexus between charging party's protected activities and the Federation's decision not to represent her grievance. (Id.) Further, the alleged change in the Federation's attitude also coincided with the District's indication that charging party could forego the Spring 1998 evaluation if she chose to do so. Accordingly, this allegation is dismissed.

Finally, the amended charge alleges that the Federation's failure to represent charging party in her grievance either caused or was an attempt to cause the District to violate the EERA. In order to state a violation of EERA section 3543.6(a), a charge must allege facts demonstrating how and in what manner the Federation caused or attempted to cause the District to violate the EERA. (American Federation of State, County and Municipal Employees (Waters) (1988) PERB Decision No. 697-H; California School Employees Association (Kotch) (1992) PERB Decision No. 953.)

The charge does not provide facts which demonstrate how or in what manner the Federation caused or attempted to cause the District to discriminate or retaliate against charging party. Further, the charge provides no support for the interesting proposition that the failure to file a grievance could actually be the cause of the allegedly grievable conduct. PERB case law, including those cases noted above, indicate that a union must take affirmative actions in its attempt to cause an employer to violate the EERA. The facts alleged in the charge fail to demonstrate that the Federation affirmatively caused or attempted to cause the District to discriminate against you. Without some allegation that the Association's conduct actually caused the District's allegedly unlawful action, the charge fails to state a prima facie cause of action. Accordingly, this allegation is dismissed as well.

Based on the facts and reasons contained herein and in my May 19, 1999 letter, the charge is 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 Regs., tit. 8, sec. 32635(a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Cal. Code Regs., tit. 8, sec. 32135(a); see also Cal. Code Regs., tit. 8, sec. 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for

filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Cal. Code Regs., tit. 8, sec. 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code. Regs., tit. 8, secs. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

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 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 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. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, sec. 32135(c).)

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 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
Charles Sakai
Board Agent

Attachment

cc: Robert Perrone

PUBLIC EMPLOYMENT RELATIONS BOARD

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

May 19, 1999

Annette (Barudoni) DeGlow

Re: Unfair Practice Charge No. SA-CO-420 2nd Amended Charge
Annette (Barudoni) DeGlow v. Los Rios College
Federation of Teachers/CFT/AFT/Local 2279
WARNING LETTER

Dear Ms. DeGlow:

You filed the above-referenced unfair practice charge on August 26, 1998. Since that time, you have amended the charge twice and we have discussed the charge allegations on a number of occasions, both in person and over the telephone. As amended, the charge alleges that the Los Rios College Federation of Teachers (Federation) breached the duty of fair representation guaranteed by EERA section 3544.9 and thereby violated section 3543.6(b) when it failed to challenge the Los Rios Community College District's (District) decision to evaluate charging party during the Spring of 1998. The charge alleges the following facts.

The District is a public school employer within the meaning of the Educational Employment Relations Act (EERA). Charging party is an employee within the meaning of the EERA. The Federation is an employee organization within the meaning of the EERA and the exclusive representative of the bargaining unit that includes charging party. The District and the Federation are parties to a collective bargaining agreement (CBA) effective from July 1, 1996 through June 30, 1999.

Over the past several years, charging party has vigorously pursued her rights under the EERA in a number of unfair practice charges and grievances filed against both the District and the Federation. Both the District and the Federation were aware of charging party's exercise of her protected rights.

In 1982, charging party was diagnosed with the vocal cord nodules. Charging party received speech therapy and a voice box to assist her during lecture. In 1988, charging party experienced a recurrence of symptoms. In 1991, the District responded to this recurrence of symptoms by moving charging party to a chalk-free classroom, and providing her with a dry erase board and an overhead projector.

In the Fall of 1994, District evaluators gave charging party a substandard evaluation. The Federation represented charging party in a grievance challenging the substandard evaluation. The District subsequently reevaluated charging party and determined that her performance was satisfactory. The Federation withdrew the grievance over charging party's objection.

In the fall of the 1997-98 school year, the District performed another evaluation of charging party. The District rated charging party "Needs Improvement" in 7 out of 17 categories, and rated charging party "Needs Improvement" overall. In addition, the evaluation committee recommended that charging party not be assigned to teach Math 52 again until her depth of knowledge of geometry could be documented. On or about January 28, 1998, charging party filed a "Challenge of Conclusions and Procedure Demand for Specificity and to Particularize."

On February 17, 1998, charging party filed a series of grievances challenging the 1997 evaluation. That same day, charging party requested that the Federation represent her in pursuing those grievances. The parties then exchanged a series of approximately thirty letters regarding charging party's grievances. On April 7, 1998, the Federation agreed to represent charging party in challenging the unfavorable evaluation. The Federation consolidated charging party's grievances into grievance 4-S98.

In a letter dated February 23, 1998, the District informed charging party that she was scheduled for re-evaluation during the Spring 1998 semester. Charging party forwarded a copy of the letter to the Federation. In a letter dated February 26, 1998, the Federation advised DeGlow that they had asked the District to suspend the Spring 1998 re-evaluation.

In memoranda dated March 19 and 24, 1998, the District informed charging party that, since she had declined to set up an evaluation schedule for Spring 1998, it had scheduled evaluations for March 23 and 30, 1998. Both memoranda invited charging party to inform the District if she chose to forego these evaluations. Charging party responded to both memoranda but did not indicate that she did not wish to be evaluated during the Spring of 1998.

The District evaluated charging party on March 23, March 25, and April 15, 1998. In a letter dated April 17, 1998, charging party sent the Federation draft grievances challenging the evaluations. In a letter dated April 20, 1998, the Federation informed charging party that it would not challenge the evaluations because the District had given charging party the option not to submit to the evaluations in Spring 1998. Since the evaluations were voluntary, the Federation indicated that it did not believe the grievances were appropriate. In addition, the Federation indicated that the grievances were not appropriate because the Spring 1998 evaluations had not resulted in any harm to charging party.

On April 21, 1998, charging party filed three grievances challenging the Spring 1998 evaluations. Those grievances are nearly identical. The grievances read, in relevant part:

> "The special review was a product of issues involving academic freedom. According to [the District], the grievant's Challenge of Conclusions and Procedure - Demand for Specificity and to Particularize for her Fall 1997 Performance Review has been answered. However, the grievant has not been provided a copy of the team's response. The actions associated with the grievant's Spring 1998 "out of sequence" review indicate that the grievant's academic rights are being violated and the grievant is being discriminated against based on her political activities and her physical disability."

On April 21 and 29, 1998, charging party reiterated her request that the Federation represent her in grieving the Spring 1998 evaluations. In a letter dated April 30, 1998, the Federation sent charging party a letter confirming its decision not to represent her in pursuing these grievances.

On or about May 1, charging party phoned Federation vice president Linda Stroh in an attempt to procure representation for these grievances. Stroh advised charging party of that the Federation Executive Board had directed its Executive Director not to represent charging party for these grievances. In a letter dated May 3, 1998, charging party advised the Federation that she did not accept its decision not to represent her. In a letter dated May 4, the Federation again declined to represent charging party in challenging the Spring 1998 evaluations. On May 18, 1998, charging party reiterated her request that the Federation represent her.

On May 22, 1998, the District responded to charging party's "Challenge of Conclusions and Procedure Demand for Specificity and to Particularize." The District's response consisted of a four-page memorandum expanding on the rationale for the unfavorable evaluation. Attached to the memorandum were three memoranda from 1995. One of these memoranda was signed by one of the three individuals who evaluated charging party. The memorandum was critical of charging party's lack of support for the department's Math 52 curriculum and suggested that charging party "be assigned a course that agrees with her philosophy."

On May 31, 1998, and again on June 8, charging party forwarded to the Federation a copy of the District's response to her "Challenge of Conclusions and Procedure Demand for Specificity and to Particularize," along with a new request for representation. Charging party contended that the District's response evidenced a violation of her rights. On June 22, 1998,

the Federation again denied charging party's request for representation.

Charging party contends that the Federation breached its duty of fair representation when it declined to represent her in challenging the Spring 1998 evaluations. Charging party cites two bases for this contention. First, charging party contends that the Spring 1998 evaluations did not comply with the letter or spirit of the CBA and that the Federation's decision not to represent her was arbitrary. Second, charging party contends that the Federation's decision not to represent her was discriminatory. Third, charging party contends that the Federation's failure to represent her during the first three steps of the grievance process was inconsistent with the CBA and with the Federation's established practice.

The charge alleges that the Federation breached the duty of fair representation guaranteed by EERA section 3544.9 and thereby violated 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) (1982) PERB Decision No. 258.) In order to state a prima facie violation of this section of EERA, Charging Party must show that the Federation'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. (Emphasis added.) [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.)

In this case, charging party alleges that the Federation's decision not to represent her in challenging the Spring 1998 evaluations was arbitrary, discriminatory and in bad faith. However, there is no evidence that the Federation arbitrarily ignored these grievances. As the Federation noted, charging party had the option to forego the Spring 1998 evaluations. While charging party's decision not to do so is understandable, the Federation's belief that these evaluations did not violate the collective bargaining agreement is also reasonable. Nothing provided in the charge indicates that the Federation's decision not to pursue grievances challenging the Spring 1998 evaluations was without a rational basis.

Charging party also alleges that the Federation's decision not to challenge the Spring 1998 evaluations constituted discrimination in violation of EERA section 3543.6(b). In analyzing allegations of discrimination violating the duty of fair representation, the Board follows the principles applicable for violations of EERA section 3543.5(a), a parallel provision prohibiting employer interference and reprisals. (Service Employees International Union, Local 99 (Kimmett) (1979) PERB Decision No. 106, at p. 13.)

In order to prevail on a discrimination theory, the charging party must establish that the employee was engaged in protected activity, that the activities were known to the employee organization and that the employee organization took adverse action against the employee because of the protected activity. (Novato Unified School District (1982) PERB Decision No. 210 at pp. 5-6 (Novato).) The Board has long recognized that, because motivation is a state of mind which may be known only to the actor, direct proof of unlawful motivation is rarely possible. (Carlsbad Unified School District (1979) PERB Decision No. 89 at p. 11.) Accordingly, the Board recognizes the following circumstantial indications of unlawful motivation: (1) the proximity of time between the protected activity and the adverse action; (2) disparate treatment of the affected employee(s); (3) departure from established procedures; (4) inconsistent or contradictory justifications for the employer's actions; and (5) inadequate investigation. (Novato at p. 7.)

In this case, charging party has engaged in substantial protected activity. Further, the Federation was certainly aware of charging party's protected activities. However, charging party has failed to establish the requisite connection between her protected activity and the Federation's decision not to challenge her reassignment.

While it is apparent that charging party and the Federation have sometimes been at odds, the facts do not demonstrate that the Federation's investigation was inadequate. In addition, the Federation's two-part rationale for choosing not to grieve the

Spring 1998 evaluations does not demonstrate a shifting or inconsistent justification. Likewise, the Federation's decision to represent two non-disabled teachers in grieving their substandard evaluations does not indicate disparate treatment based on charging party's protected activities. A finding of disparate treatment is a finding that others have been treated differently for similar or identical conduct or in a similar situation. (See, e.g. Belridge School District (1980) PERB Decision No. 157.) Here, there is no allegation that the two other grievances arose under similar circumstances. The charge merely alleges that all three grievances raised the issue of academic freedom. Obviously, two grievances may raise the same issue and yet have very different bases. Further, the Federation has agreed to represent charging party in challenging her substandard evaluation.

The charge does contend that the Federation deviated from its established policies when it refused to represent her in the first three levels of the grievance procedure. However, charging party has failed to allege any facts demonstrating that the Federation had an established practice of representing bargaining unit employees on all grievances. Instead, charging party claims that section 13.2.1.1 of the CBA "arguably" gives her the right to Federation representation at the first three levels of the grievance procedure. Section 13.2.1.1 provides, in relevant part:

> At the Informal, College, and District levels, the grievant may:
>
> a. request [Federation] representation. If the [Federation] agrees to represent at the Informal, College, or District level, no commitment to pursue the grievance to a Board of Review is implied.
>
> OR
>
> b. Represent herself or himself alone. This option applies to situations in which the grievant does not request [Federation] representation or to situations where the [Federation] denies a representation request.

This provision in no way obligates the Federation to represent unit members during the first three steps of the grievance procedure. In fact, the CBA specifically envisions the situation presented in this case and permits individual grievants to proceed without Federation-assistance. Accordingly, charging party has failed to establish that her protected activity motivated the Federation's decision not to challenge the Spring 1998 evaluations.

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 be signed under penalty of perjury by the charging party. The amended charge must have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before May 26. 1999 . I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198.

Sincerely,

Charles Sakai
Board Agent