

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



JUDITH GLORIA HANSEN,)	
)	
Charging Party,)	Case No. LA-CO-789
)	
v.)	PERB Decision No. 1379
)	
CALIFORNIA SCHOOL EMPLOYEES)	February 28, 2000
ASSOCIATION,)	
)	
Respondent.)	

Appearances: Judith Gloria Hansen, on her own behalf; Karen L. Hartman, Staff Attorney, for California School Employees Association.

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

AMADOR, Member: This case comes before the Public Employment Relations Board (Board) on exceptions filed by Judith Gloria Hansen (Hansen) to a Board administrative law judge's (ALJ) proposed decision (attached). The ALJ dismissed the charge that alleged the California School Employees Association (CSEA) breached its duty of fair representation in violation of sections 3544.9 and 3543.6(a) of the Educational Employment Relations Act (EERA) and discriminated against her in violation of EERA section 3543.6(b).¹

¹EERA is codified at Government Code section 3540 et seq. 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.

The Board has reviewed the entire record in this case, including the unfair practice charge, the proposed decision, Hansen's appeal and CSEA's response. The Board finds the ALJ's proposed decision to be free from prejudicial error and adopts it as the decision of the Board itself.

ORDER

The unfair practice charge and complaint in Case No. LA-CO-789 are hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Dyer joined in this Decision.

Section 3543.6 provides, in relevant part:

It shall be unlawful for an employee organization to:

- (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.



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

JUDITH GLORIA HANSEN,)	
)	
Charging Party,)	Unfair Practice
)	Case No. LA-CO-789
v.)	
)	PROPOSED DECISION
CALIFORNIA SCHOOL EMPLOYEES)	(11/29/99)
ASSOCIATION,)	
)	
Respondent.)	
_____)	

Appearances: Judith Gloria Hansen, on her own behalf; Karen L. Hartmann, Staff Attorney, for California School Employees Association.

Before Thomas J. Allen, Administrative Law Judge.

PROCEDURAL HISTORY

In this case, a public school employee alleges her exclusive representative violated its duty of fair representation. The exclusive representative denies any violation.

On December 21, 1998, Judith Gloria Hansen (Hansen) filed an unfair practice charge against the California School Employees Association (CSEA). On March 23, 1999, the Office of the General Counsel of the Public Employment Relations Board (PERB) issued a complaint against CSEA. The PERB complaint alleged that on November 4, 6, 12 and 16 and December 1, 1998, Hansen contacted CSEA requesting assistance regarding problems with her employer, the La Mesa-Spring Valley School District (District). The complaint further alleged that CSEA failed to assist Hansen, and also failed to provide her with an explanation for its failure to assist her.

CSEA answered the complaint on April 12, 1999. PERB held an informal settlement conference on May 11, 1999, and a formal hearing on September 28, 1999. The case was submitted for decision on October 28, 1999.

FINDINGS OF FACT

Hansen is an employee under the Educational Employment Relations Act (EERA).¹ CSEA is an employee organization under EERA and is Hansen's exclusive representative.

Hansen is a bus driver who has been employed by the District for almost 25 years. CSEA has represented her on various matters, and there is no apparent history of animosity between Hansen and CSEA.

The year 1998 was hard on Hansen physically. In January her bus was broadsided by a car, and in August it was broadsided by a truck. Later, in September or early October, Hansen had gall bladder surgery. On top of all this, she had a difficult relationship with her supervisor, District Transportation Director Craig Wood (Wood).

In mid-October 1998, Hansen and the other District bus drivers had the opportunity to bid on the various bus routes. Because Hansen was the second most senior driver at that time, she had the second bid. She chose a route that was new to her, and a less senior driver chose her old route. Under Article XV, section 15.2.1, of the 1996-1999 Agreement between CSEA and the

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

District (Agreement), the chosen routes were to be "retained until the next bidding." On November 2, 1998, however, when Hansen first drove the new route, she discovered it involved lifting special education students on and off the bus, and in her physical condition she found this to be painful.

The PERB complaint alleges Hansen contacted CSEA on five separate occasions (November 4, 6, 12 and 16 and December 1, 1998) about problems with the District. Hansen's charge alleged, and the evidence showed, that on these five occasions Hansen's contact was with CSEA Chapter President Jane Vorrath (Vorrath). Each of these occasions shall be discussed in turn.

November 4, 1998

On November 4, 1998, Hansen wrote a letter to her supervisor, Wood. In the letter, Hansen stated in part that on November 3, 1998, her doctor had seen her and had said she could not do the activity she was doing (lifting students) because of her injuries. Hansen asked to return to her old bus route.

Hansen sent a copy of the letter to CSEA Chapter President Vorrath, whom Hansen also called. Vorrath advised Hansen about her option under Article XV of the Agreement to exchange routes with another driver, if that driver agreed. Vorrath explained that under Article XV this was the only way Hansen could get her old route back at that point.

Vorrath further advised Hansen that not much else could be done unless Wood had medical documentation of Hansen's physical limitations. Hansen said she assumed Wood had access to such

documentation, because she had a workers' compensation claim pending with the District. Vorrath advised her not to assume Wood had such documentation unless she (Hansen) had given it to him directly.

November 6, 1998

On November 6, 1998, pursuant to Vorrath's advice, Hansen gave Wood some medical documentation from her doctor. The specific document she gave Wood appears to date from September 1998. It stated in part that Hansen could return to "regular" work on October 12, 1998, and "modified" work on September 8, 1998. It then specified various "restrictions" including, "No heavy lifting." Vorrath obtained a copy of the document from Wood once he received it from Hansen.

Vorrath advised Hansen that this medical document appeared to have expired, because it said Hansen could return to "regular" work on October 12, 1998. Hansen acknowledged there was some "error" in the dates, but she insisted the document was still valid, because it still specified restrictions. Hansen apparently did not recognize the more obvious interpretation of the document: that the specified restrictions were for the period of "modified" work beginning on September 8, 1998, not for the period of "regular" work beginning on October 12, 1998. Vorrath never saw any other medical documentation of Hansen's physical limitations.

Vorrath nonetheless sent an e-mail message to District Assistant Superintendent Don Royal (Royal), requesting some

relief for Hansen. Royal replied there was no reason why Hansen could not be provided with a bus aide to help her. Royal stated he would call Wood and arrange to have an aide put on Hansen's route. Vorrath felt assured that Royal would take care of the problem. Vorrath did not, however, send Hansen a copy of her message to Royal, or any other written confirmation of her communication with Royal.

November 12, 1998

On November 12, 1998, Wood told Hansen that parents were complaining about her being "negative." Wood refused to identify any complaining parents, however. Hansen called Vorrath, who advised her that if no complaining parents were identified they "don't exist." This was Vorrath's interpretation of Article IV, section 4.7, of the Agreement, which provided in part that the District shall not pursue any complaints against employees that are not in writing and are not given to the employees, and that the District shall drop any charges if complainants refuse to appear at a conference. In fact, the District did not pursue any parental complaints about Hansen being "negative," if any such complaints existed.

According to Hansen, Vorrath said she would send Wood a fax or an e-mail message on this subject. Vorrath did not deny saying this, but there is no evidence she followed through.

November 16, 1998

On November 16, 1998, Hansen met with Assistant Superintendent Royal, who told her he would talk to Wood about

having an "attendant" on her route to do the lifting of students. Hansen testified she was "in total agreement with that." On November 18, 1998, however, she sent a letter to Chapter President Vorrath, requesting that CSEA still assist her in getting back her old bus route.² She asked in part why the safety article of the Agreement stated (at Article XVI, section 16.1.1), "An employee shall not work under conditions or perform tasks which endanger their health or safety," if nothing could be done about her situation.

Vorrath did not understand Hansen's letter to be a request to file a safety grievance. As Vorrath had already advised Hansen, CSEA's practice for processing a grievance was to refer the matter to the chief job steward. Furthermore, Vorrath did not believe the safety article addressed Hansen's need for accommodation of her physical limitations -- an issue not specifically addressed anywhere in the Agreement.

Vorrath apparently still assumed Royal would take care of Hansen's lifting problem, and she apparently did not respond to Hansen's letter.³ The problem was in fact addressed soon thereafter, but it was only partially solved. On November 23, 1998, Hansen was given a bus aide for one of the runs on her

²The letter actually bears the date "11-8-1998," but Hansen testified she sent it on November 18, 1998.

³Vorrath testified she answered the letter in a telephone conversation, but she also testified she had no contact with Hansen between early November and early December. I therefore credit Hansen's more consistent testimony that Vorrath did not respond (despite some ambiguity about whether Hansen would regard having a telephone conversation as "responding").

route, but there were still other runs that involved lifting students. Hansen apparently did not inform CSEA at that time, however, that she needed assistance with these other runs.

December 1, 1998

On December 1, 1998, Wood told Hansen the District could not accommodate her physical limitations and she should go on disability. Hansen testified she called Vorrath, who told her to call District employee Janice Cook about getting disability pay. Vorrath apparently did not remember this conversation, but she did not deny it occurred. There is no evidence Hansen and Vorrath discussed anything other than disability pay.

Although this was the last contact between Hansen and CSEA alleged in the complaint, in fact the contacts continued. On December 7, 1998, after three days on disability, Hansen returned to work, only to be told she would no longer have a bus aide at all. Hansen testified she called Vorrath, who said she (Vorrath) would not let that happen. Hansen did get the bus aide back, and she acknowledged CSEA probably played a part in that.⁴ By the time of the hearing, however, Vorrath apparently did not remember this contact with Hansen.

The next contact Vorrath did remember occurred in a parking lot in early December 1998, when Vorrath asked Hansen how the bus aide was working out. Hansen said that she only had an aide for a couple of days, and also that the District had reduced her

⁴Hansen testified she believed that assistant superintendent Royal told her he had spoken with Vorrath.

hours. Vorrath said she would look into it. At the next regular CSEA chapter meeting, on December 10, 1998, Vorrath referred the matter to Chief Job Steward Chris Benker (Benker), who then followed up on it.

On January 6, 1999, Benker obtained from Hansen (at his request) a letter describing the change in her hours. Benker took this information, reviewed the original bus route bid list, and talked to Transportation Director Wood. Benker concluded Hansen's hours had decreased either 2.5 or 3.5 hours per week, while a decrease of 5 hours would be necessary to support a grievance.⁵

Benker also concluded, from his conversation with Wood, that Hansen did have a bus aide on an ongoing basis. Benker apparently did not learn, however, either from Hansen or from Wood, that Hansen did not have a bus aide for all the runs that involved lifting students.

Benker informed Hansen the decrease in her hours was insufficient to support a grievance. As Hansen acknowledged in her testimony, he also told her to file a grievance if she disagreed. There is no evidence Hansen did file a grievance. Hansen's problems were alleviated, however, on January 15, 1999, when Hansen took over a retiring driver's route, which involved more hours and no lifting.

⁵Under Article XV, section 15.4.1, of the Agreement, a decrease in one hour of drive time per day (as computed from the original bid list) on a special education bus route (like Hansen's) would give the driver the right to bid on any route held by a less senior driver.

ISSUE

Did CSEA violate its duty of fair representation?

CONCLUSION

As charging party, Hansen has alleged that her exclusive representative violated its duty of fair representation under EERA. The duty of fair representation imposed on an exclusive representative extends to grievance handling. (United Teachers of Los Angeles (Collins) (1982) PERB Decision No. 258 (Collins).) In order to establish a violation of the duty, a charging party must show the exclusive representative's conduct was arbitrary, discriminatory or in bad faith. In Collins, PERB stated in part:

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:

[M]ust 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. (Rocklin Teachers Professional Association (Romero) (1980) PERB Decision No. 124.)

In order to prevail, a charging party then must prove such facts.

In the present case, the complaint alleges in part that Hansen contacted CSEA requesting assistance on five occasions (November 4, 6, 12 and 16 and December 1, 1998). The facts proved at the hearing support this allegation. The complaint further alleges that CSEA failed to assist Hansen, and also failed to provide her with an explanation for its failure to assist her. The facts proved at the hearing do not generally support this latter allegation, however. In general, the proven facts show that CSEA did provide Hansen with some assistance and some explanation, even though it was not the assistance Hansen most wanted (her old bus route back), and not always an explanation she accepted.

On November 4, 1998, Hansen sent CSEA Chapter President Vorrath a copy of her letter to her supervisor, Wood, asking to return to her old bus route. Vorrath assisted Hansen by advising her that under Article XV of the Agreement she had the option of exchanging routes with another driver, if that driver agreed. Vorrath explained that under Article XV this was the only way Hansen could get her old route back at that point. Vorrath further advised Hansen to give Wood medical documentation of her physical limitations, and Hansen apparently accepted this further advice.

On November 6, 1998, Hansen gave Wood a medical document, which Vorrath then obtained from Wood. Vorrath advised Hansen that the document appeared to have expired. Hansen acknowledged an "error" in the dates but apparently rejected Vorrath's advice.

Vorrath never saw any other medical documentation, but she nonetheless contacted Assistant Superintendent Royal and obtained an assurance that Royal would provide a bus aide to help Hansen.

On November 12, 1998, Hansen told Vorrath that Wood had said unidentified parents were complaining about Hansen being "negative." Vorrath advised Hansen that, in effect, the unidentified parents "don't exist," because, under Article IV, section 4.7, of the Agreement, Wood could not pursue complaints from unidentified complainants. In fact, no complaints about Hansen being "negative" were pursued.

Hansen testified, and Vorrath did not deny, that Vorrath said she would send Wood a fax or an e-mail message on this subject. Vorrath apparently did not follow through. As far as the facts proved at the hearing show, this was the only occasion on which Vorrath failed to do something she said she would do.

On November 16, 1998, Hansen talked to Assistant Superintendent Royal and was (according to her own testimony) "in total agreement" with Royal arranging to have an "attendant" on her route to lift students. On November 18, 1998, however, Hansen wrote Vorrath asking CSEA again to help her get her old bus route back. Vorrath apparently did not respond. As far as the facts proved at the hearing show, this was the only occasion (of the five alleged in the complaint) on which Vorrath did not respond at all to a request from Hansen. At that time, Vorrath apparently assumed (from her previous communication with Royal) that Royal would take care of Hansen's lifting problem. Also,

Vorrath had already discussed with Hansen the only option Hansen then had under Article XV of the Agreement to get her old route back (by an agreed exchange with the other driver).

On December 1, 1998, Hansen told Vorrath that Wood had said Hansen should go on disability. Vorrath advised Hansen whom to call about getting disability pay. There is no evidence Hansen and Vorrath discussed anything other than disability pay.

The facts proved at the hearing thus show that on four of the five occasions alleged in the complaint CSEA did assist Hansen at least by giving her pertinent advice, whether or not Hansen accepted that advice. The facts also show that on one occasion CSEA went further and obtained an assurance from the District assistant superintendent (Royal) that Hansen would get an aide to help her with lifting. CSEA Chapter President Vorrath took this action even though she then believed that the medical documentation of Hansen's physical limitations had expired.

The facts also show Vorrath did fail to do one thing she said she would do (send Wood a fax or an e-mail message about unidentified complainants) and also failed to respond at all to one request (Hansen's letter of November 18, 1998). PERB has held that such failures may be part of "a pattern of conduct by [an exclusive representative] which, considered in its entirety, demonstrates a prima facie showing of an arbitrary failure to fairly represent [an employee]." (American Federation of State, County and Municipal Employees, International, Council 57 (Dehler) (1996) PERB Decision No. 1152-H (Dehler).)

I conclude, however, that Dehler and the present case can and should be distinguished. Vorrath's apparent failures occurred in a pattern of conduct which, considered in its entirety, was one in which CSEA did assist Hansen. This includes four of the five occasions alleged in the complaint; it also includes the earlier and later occasions on which CSEA represented, advised or otherwise assisted Hansen, as shown at the hearing.

Furthermore, Hansen has not proved that CSEA arbitrarily ignored or otherwise mishandled a meritorious grievance. There is no evidence that Hansen asked Vorrath to file a grievance on any of the five occasions alleged in the complaint. Had Hansen done so, presumably Vorrath would have referred the matter to the chief job steward, as was CSEA's practice, and as Vorrath did with the issues Hansen raised later. Nor is it apparent Hansen had a meritorious grievance to pursue. Article XV of the Agreement did not appear to allow her to get back her old bus route (which another driver had chosen), and neither the safety article (Article XVI) nor any other provision specifically addressed her need for accommodation.⁶ Finally, Vorrath did not ignore Hansen's need for accommodation but rather obtained an assurance from Assistant Superintendent Royal that it would be addressed (even if that assurance later proved inadequate).

⁶There may have been other legal authorities specifically addressing that need, but the duty of fair representation does not generally apply to matters unconnected to a collective bargaining agreement. (Los Angeles Unified School District (1994) PERB Decision No. 1061.)

As the charging party in this case, Hansen has the burden of proof. (PERB Regulation 32178.⁷) I conclude Hansen has not met the burden of proving that CSEA violated its duty of fair representation, as alleged in the complaint.

PROPOSED ORDER

Based upon the foregoing findings of fact and conclusions of law, and upon the entire record in this matter, it is ordered that the complaint and the underlying unfair practice charge in Case No. LA-CO-789, Judith Gloria Hansen v. California School Employees Association, are hereby DISMISSED.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174

FAX: (916) 327-7960

In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code Regs., tit. 8, sec. 32300.)

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for

⁷PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, secs. 32300, 32305, 32140, and 32135(c).)

THOMAS J. ALLEN
Administrative Law Judge