

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

ORDER

The unfair practice charge in Case No. LA-CO-436 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Member Dyer and Member Baker joined in this Decision.

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.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



November 23, 1999

Mary Lou Torres

Re: Mary Lou Torres v. California Teachers Association
Unfair Practice Charge No. SA-CO-436
DISMISSAL LETTER

Dear Ms. Torres:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB) on August 12, 1999. An amended charge was filed on September 22, 1999. As amended, the charge alleges that the California Teachers Association (CTA) breached its duty of fair representation, guaranteed by Government Code section 3544.9, and thereby violated the Educational Employment Relations Act (EERA), Government Code section 3543.6(b), when it failed to adequately represent you in your grievance against the Winton Elementary School District (District) and refused to take your grievance to arbitration.

I indicated to you in my attached letter dated October 15, 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 October 25, 1999, the charge would be dismissed.

On October 28, 1999, you requested additional time to file an amended charge. An extension was granted to November 12, 1999. A second amended unfair practice charge was filed on November 12, 1999.

In your cover letter, you reaffirmed that you intended to file your charge against CTA, rather than the Winton Teachers Association, a CTA affiliate.

In the amended charge, you provide additional detail concerning the conduct of Donna Jefferson, CTA staff representative. In essence, you allege that you brought matters to the attention of Ms. Jefferson, however, she did not act on them. Furthermore, on June 21, 1999, Ms. Jefferson attended a meeting with Superintendent Crass, Principal Fauerbach and two other union representatives concerning your grievance. However, you were not

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permitted to attend the meeting. You contend that Ms. Jefferson accepted the "false allegations presented on hearsay" concerning you at the meeting in deciding not to take your grievance to arbitration.

Based on the factual allegations in your charge, the charge fails to state a prima facie violation of the duty of fair representation.

As an initial matter, the charge is filed against CTA, rather than the Winton Teachers Association (WTA). In a prior telephone conversation with you, I explained that CTA is not the exclusive representative of the certificated bargaining unit. However, in your cover letter accompanying your second amended charge, you stated that you did intend to file the charge against CTA.

The WTA is the exclusive representative of the certificated bargaining unit. As such, WTA has a duty to represent bargaining unit members fairly. In providing additional services and resources to its members, the WTA may affiliate with other organizations such as CTA. However, CTA is not the exclusive representative and it has no obligation to bargain with an employer, nor does it owe a duty of fair representation to unit members. (Fresno Unified School District (1982) PERB Decision No. 208.) Since CTA does not owe you a duty of fair representation, your charge alleging that CTA breached its duty of fair representation when it did not adequately represent you and refused to take your grievance to arbitration, must be dismissed.

Assuming your charge was properly filed against the WTA, the charge fails to provide factual allegations which demonstrate a violation of the duty of fair representation.

As I explained in the attached letter, in order to state a prima facie violation of the duty of fair representation, a charging party must show that the Association's conduct was arbitrary, discriminatory or in bad faith. (Rocklin Teachers Professional Association (Romero) (1980) PERB Decision No. 124.) A union has broad discretion to determine the manner of representation. For example, a union's failure to meet with a unit member or consider and present certain evidence does not violate the duty of fair representation. (United Teachers-Los Angeles (1992) PERB Decision No. 932; California Faculty Association (Pomerantsev) (1988) PERB Decision No. 698-H; Los Angeles City and County School Employees Union (1987) PERB Decision No. 645.)

Furthermore, an exclusive representative has discretion to determine how far to pursue a grievance, including whether to take a grievance to arbitration, as long as the union "does not

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arbitrarily ignore a meritorious grievance or process a grievance in a perfunctory fashion." (United Teachers of Los Angeles (Collins) .-)

In the present charge, the WTA evaluated your grievance, determined not to advance the grievance to arbitration and informed you of its decision. The charge fails to provide facts which demonstrate that the union's conduct concerning the handling of your grievance was arbitrary, discriminatory or in bad faith. Accordingly, the charge fails to state a prima facie case and 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 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

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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
Robin W. Wesley
Regional Attorney

Attachment

cc: Ramon E. Romero

PUBLIC EMPLOYMENT RELATIONS BOARD



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



October 15, 1999

Mary Lou Torres

Re: Mary Lou Torres v. California Teachers Association
Unfair Practice Charge No. SA-CO-436
WARNING LETTER

Dear Ms. Torres:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB) on August 12, 1999. An amended charge was filed on September 22, 1999. As amended, the charge alleges that the California Teachers Association (CTA) breached its duty of fair representation, guaranteed by Government Code section 3544.9, and thereby violated the Educational Employment Relations Act (EERA), Government Code section 3543.6(b), when it failed to adequately represent you in your grievance against the Winton Elementary School District (District) and refused to take your grievance to arbitration.

We discussed your original charge on August 25, 1999. I telephoned you on October 13 and again on October 14, 1999, to clarify certain facts, but was unable to reach you. I understand you work late and often do not return home until after 6:00 p.m.

My investigation of the charge revealed the following information. The Winton Teachers Association, CTA/NEA (WTA) is the exclusive representative of the certificated bargaining unit within the District. In the statement of the charge you refer to both the WTA and CTA interchangeably. Therefore, it is clear that WTA is the subject of your charge.¹

You are employed by the District as a teacher. In a letter dated May 13, 1999, the District informed you that you were being involuntarily transferred to another school.

On May 20, 1999, you and CTA representative Donna Jefferson met with Superintendent Crass. At this meeting, Mr. Crass informed you of the reasons for your administrative transfer. You were

¹CTA, the state affiliate of the WTA, is not the exclusive representative and, therefore, is not subject to the duty of fair representation.

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told there was a personality conflict between you and the principal at your school.

You initiated a grievance challenging the involuntary transfer on June 7, 1999 in a meeting with Mr. Crass. Mr. Crass instructed you to begin the grievance process at the first level by submitting your grievance to the school principal.

On June 9, 1999, you met with the principal. The principal denied your grievance in a written response. You pointed out errors in the response to WTA President Toby Masterson, however, the charge alleges "he did not react nor clarify the response."

On June 15, 1999, you and a union representative met with Mr. Crass at the second level of the grievance procedure. Immediately after the meeting, the union representative spoke privately with Mr. Crass. You were not allowed to participate in this meeting.

Your grievance was denied by Mr. Crass.

On June 21, 1999, the union decided not to elevate your grievance to arbitration, the third level of the grievance procedure. You were notified of the union's decision on June 22, 1999.

On June 24, 1999, you filed a written appeal of the union's decision. On July 9, 1999, you met with Donna Jefferson concerning the union's decision not to take your grievance to arbitration.

The charge alleges that the union failed to adequately represent you when it did not speak for you in meetings with the District and excluded you from meetings. The charge also alleges that when the union decided not to take your grievance to arbitration it made its decision without giving you an opportunity to provide input, it considered biased information provided by your supervisor and denied you the opportunity to "review false allegations, witnesses and evidence." You also allege that the union denied you representation because you are hispanic.

Based on the facts stated above, the charge fails to state a prima facie case..

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 the duty of fair representation, a charging party must show that the Association's conduct was arbitrary, discriminatory or in bad faith. (Rocklin

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Teachers Professional Association (Romero) (1980) PERB Decision No. 124.) In United Teachers of Los Angeles (Collins), the 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.]

The charge alleges that the union did not adequately represent you in your grievance with the District when it did not speak for you in meetings and failed to include you in meetings with the District. However, a union has discretion in the manner of representation. For example, the Board has held that a union's decision to conduct an arbitration hearing contrary to the wishes of the charging party, by failing to meet with the charging party before the hearing and failing to present certain evidence, does not violate the duty of fair representation. (United Teachers-Los Angeles (1992) PERB Decision No. 932.) Nor does a union's refusal to call witnesses or subpoena records requested by the charging party demonstrate a breach of the duty of fair representation. (California Faculty Association (Pomerantsev) (1988) PERB Decision No. 698-H; Los Angeles City and County School Employees Union (1987) PERB Decision No. 645.) In the same manner, the WTA's failure to speak for you in a meeting or

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include you in another meeting with the District, does not violate the duty of fair representation.

Furthermore, as noted above, an exclusive representative has discretion to determine how far to pursue a grievance, including whether to take a grievance to arbitration, as long as the union "does not arbitrarily ignore a meritorious grievance or process a grievance in a perfunctory fashion." (United Teachers of Los Angeles (Collins).)

In the present charge, the WTA evaluated your grievance, determined not to advance the grievance to arbitration and informed you of its decision. To state a violation of the union's duty of fair representation, your charge must allege facts which show that the union's decision not to take the grievance to arbitration was without a rational basis, was devoid of honest judgement, discriminatory or in bad faith. (American Federation of State, County and Municipal Employees (Smith) (1990) PERB Decision No. 859.) Since it is not apparent from the charge that the union's conduct was arbitrary, discriminatory or in bad faith, the charge fails to state a prima facie case and must be dismissed.

Finally, you allege that the union did not represent you because you are hispanic. Allegations of racial discrimination are not covered by the Educational Employment Relations Act and, therefore, PERB is without jurisdiction to address this allegation.

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 Second 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 October 25, 1999, I shall dismiss your charge. If you have any questions, please call me at (916) 327-8385.

Sincerely,

Robin W. Wesley

Regional Attorney