STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

GEORGE RAYMOND MARSH, JR., Charging Party, v. SACRAMENTO CITY TEACHERS ASSOCIATION, Respondent.	Case No. SA-CO-448-E PERB Decision No. 1458 August 28, 2001

Appearances: George Raymond Marsh, Jr., on his own behalf; California Teachers Association by Diane Ross, Staff Attorney, for Sacramento City Teachers Association.

Before Amador, Baker and Whitehead, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (Board) on appeal by George Raymond Marsh, Jr., (Marsh) of a Board agent's dismissal (attached) of his unfair practice charge. The charge alleged that the Sacramento City Teachers Association (Association) violated the Educational Employment Relations Act (EERA).[1] The charge did not state which section(s) of EERA the Association violated. However, based on the information contained in the charge, as well as subsequent communications, the Board agent addressed the charge as an alleged violation of the Association's duty of fair

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

representation, as set forth in EERA sections 3544.9[2] and 3543.6(b).[3] The Association allegedly violated EERA by failing to properly represent Marsh in a grievance against the Sacramento City Unified School District.

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

ORDER

The unfair practice charge in Case No. SA-CO-448-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Amador and Baker joined in this Decision.

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[2]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.

[3]Section 3543.6(b) provides:

> 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
Sacramento, CA 95814-4174
Telephone: (916) 327-8384
Fax: (916) 327-6377

April 30, 2001

Mr. George R. Marsh Jr.

Re: George Raymond Marsh, Jr. v. Sacramento City Teachers Association
Unfair Practice Charge No. SA-CO-448-E
DISMISSAL LETTER

Dear Mr. Marsh,

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on February 27, 2001. As Charging Party, you allege that the Sacramento City Teachers Association (SCTA) violated the Educational Employment Relations Act (EERA)[1]. The original charge did not state which section(s) of EERA that SCTA violated. However, based on the information contained in the charge as well as our subsequent communications, I addressed the charge as an alleged violation of SCTA's duty of fair representation, which is set forth in section 3544.9[2] and enforced through section 3543.6(b)[3].

I indicated to you in my attached letter dated April 18, 2001, 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 April 27, 2001, the charge would be dismissed.

I received your amended charge on April 27, 2001.

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[1] EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

[2] 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.

[3] EERA section 3543.6(b) provides:

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.

Facts

The amended charge provides the following information.

From approximately March 30, 2000 to the present SCTA has failed to fairly represent you in dealings with the Sacramento City School District. SCTA has failed to follow Article 4, the grievance procedure, of the collective bargaining agreement by refusing to properly process your grievance, and refusing to secure at the lowest administrative level solutions "which may from time to time arise concerning the welfare and working relationships of those covered by the agreement."

On June 7, 2001 you filed a grievance alleging that the you were being unfairly evaluated regarding positive behavior plans, and that false information was placed in your personnel file regarding the April 26, 2000 incident. On April 26, 2000, Vice Principal Richard Markwell reprimanded you for filling out referrals in response to a fight between students earlier that day.

In February 2001 you mailed to the regional and state offices of the California Teachers Association certified letter asking for fair representation. You also phoned both the regional and state offices of the CTA. You received no response to your certified mail or telephone calls.

SCTA has failed and refused on or about March 6, 2000 to respond to your concerns regarding the dissemination of false information by Principal Nancy Pequeno regarding a weapon brought to school. SCTA has failed to process your grievance claim regarding the March 6, 2000 weapon on campus.

Discussion

The amended charge contains much of the same information contained in the original charge. As with the original charge this amended charge fails to establish a prima facie violation of EERA.

The allegations you make against SCTA in this amended charge are the same made in the original charge.

First, you allege that SCTA failed to represent you in regards to the grievance you filed in June 2000. Although the warning letter of April 18th states that you filed the grievance in July 2000, and the amended charge states that you filed in June 2000 the analysis is the same.

As Charging Party, you allege that the exclusive representative, SCTA, denied you the right to 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 Respondent'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 omitted.]
>
> 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.]

None of the information provided in the original charge demonstrated that SCTA's actions were without a rational basis or devoid of honest judgment. Also, in the amended charge you provide no additional information demonstrating that SCTA's actions were without a rational basis or devoid of honest judgment.

Second, in the amended charge you reassert that SCTA violated Article 4 of the collective bargaining agreement. EERA section 3541.5(b) states:

> The board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of such an agreement that would not also constitute an unfair practice under this chapter.

You allege that SCTA failed to comply with Article 4 of the contract. However, as stated above, you fail to present facts demonstrating a unfair practice under the EERA. Therefore PERB does not have the authority to enforce the collective bargaining agreement in this instance.

Finally, you allege that SCTA failed to process a grievance in March 2000 regarding a weapon on campus. This allegation was not addressed in the original warning letter, because it was not contained in the original charge.

EERA section 3541.5(a)(1) prohibits PERB from issuing a complaint with respect to "any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (Gavilan Joint Community College District (1996) PERB Decision No. 1177.) The charging party bears the burden of demonstrating that the charge is timely filed. (Tehachapi Unified School District (1993) PERB Decision No. 1024; State of California (Department of Insurance) (1997) PERB Decision No. 1197-S.) For an allegation of the breach of the duty of fair representation, the statute of limitations begins to run on the date the employee, acting with reasonable diligence, knew or should have known that further assistance from the union was unlikely. (Los Rios College Federation of Teachers, CFT/AFT (Violett, et al.) (1991) PERB Decision No. 889.)

You filed the amended charge on April 27, 2001. Because the assertion that SCTA failed to process your on or about March 6, 2000 is a new allegation, the statute of limitations is computed from the date of filing of the new allegation. Therefore for this alleged unfair practice to fall within PERB's six month statute of limitations you must demonstrate that you did not know that SCTA would not assist you with your concerns until after October 27, 2000. In the amended charge you state that "the Union has failed and refused from on or about March 6, 2000 to respond to your concerns..." However, you provide no facts which demonstrate that you discovered that SCTA would not assist you with your March 6, 2000 grievance until or after October 27, 2000. Thus you have not met your burden as charging party of demonstrating that this portion of the amended charge is timely filed within PERB's requisite six month statute of limitations.

Therefore, I am dismissing the charge based on the facts and reasons contained above and in my April 18, 2001 letter.

Right to Appeal

Pursuant to PERB Regulations[4], 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. (Regulation 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

[4] PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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. (Regulations 32135(a) and 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 Regulation 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. (Regulations 32135(b), (c) and (d); see also Regulations 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. (Regulation 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 Regulation 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. (Regulation 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. (Regulation 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
Marie A. Nakamura
Board Agent

Attachment

cc: Diane Ross

MAN

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
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Telephone: (916) 327-8384
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April 18, 2001

Mr. George R. Marsh Jr.

Re: George Raymond Marsh, Jr. v. Sacramento City Teachers Association
Unfair Practice Charge No. SA-CO-448-E
WARNING LETTER

Dear Mr. Marsh,

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on February 27, 2001. As Charging Party, you allege that the Sacramento City Teachers Association (SCTA) violated the Educational Employment Relations Act (EERA)[1]. The charge does not state which section(s) of EERA that SCTA violated. However, based on the information contained in the charge as well as our subsequent communications, I am addressing this charge as an alleged violation of SCTA's duty of fair representation, which is set forth in section 3544.9[2] and enforced through section 3543.6(b)[3].

Facts

You have been a Special Day Class teacher at Will C. Wood Middle School in Sacramento since 1995.

As background you provide the following information. In the Fall of 1998, prior to the November election you attended a mandatory staff meeting at which a video advocating support of the Democratic Party was shown. After the video you explained to those in attendance that it was unlawful for the District to require employees to view the video. On the

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[2] 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.

[3] EERA section 3543.6(b) provides:

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.

morning after the meeting Lynette Tanaka, a union representative, met with you and explained that she had inquired with SCTA and was told that the mandatory viewing of the video was not unlawful. You assert that after the meeting in the Fall of 1998 at which the video was shown SCTA has not given you any assistance.

Specifically you assert that SCTA has not represented you in regards to a grievance filed on July 12, 2000. You filed the grievance in protest of a performance evaluation you received on an improper form and a reprimand you received based on "unvalidated and inaccurate information and based on filing of a form not required of any other teacher."

Before the events leading to the grievance, you discussed with Vice Principal Richard Markwell the procedures for reporting fights to the Administration. On March 20, 2000, Mr. Markwell came to your classroom and instructed you not to send any more students to the Vice Principal's office for fighting unless it involved "blood and guts." When this conversation began you stated that you would like a union representative to be present. Mr. Markwell replied, "no, we are not going to do that." You did not think Mr. Markwell's comments regarding "blood and guts" were in accordance with the collective bargaining agreement. Therefore you discussed the conversation with Principal Nancy Pequeno and provided her as well as SCTA documentation of the March 20th meeting.

On March 28, 2000 you met with Mr. Markwell, Ms. Pequeno, and Larry Hopper, a union representative to discuss Mr. Markwell's "blood and guts" comment. The comment was never discussed. Instead the meeting focused on the how you treat fights in the classroom. During the meeting you were told by Mr. Markwell and Ms. Pequeno that when a fight occurs in your classroom you do not have to document the fight and send the students to the Vice-Principal's office.

In March of 2000 you received a performance evaluation with an overall rating of "satisfactory." However, for the category of "Develops and implements individual program plans in terms of the child's ability and handicap in relation to the curriculum" you received a rating of "needs improvement." In the July 12, 2000 grievance, you assert that this evaluation was not on the proper form. You do not specifically grieve the rating of "needs improvement."

On April 26, 2000, you attempted to break up a fight. While you were trying to break up the fight a student yelled, "let them fight." He then pushed you. For pushing you the student was suspended for only one day. After the incident you filled out "referrals" for the students involved. That same day Mr. Markwell came to your classroom and presented you with a reprimand for using "referrals" and not "incident reports" to document the fight. Incident reports are used to document especially egregious fights, but the one you broke up on April 26th was not such an egregious incident. However, a copy of the reprimand was placed in your personnel file.

Because of the reprimand of April 26, 2000 and the evaluation of March 2000, you filed a grievance on July 12, 2000. The Level I meeting did not occur until November 15, 2000. Prior the Level 1 meeting no one from the SCTA met with you to discuss your grievance and

you were not allowed to present your side of the grievance during the Level 1 meeting. Manuel Villarreal, SCTA Director told you, that the Level 1 meeting's purpose was not to hear the Grievant's argument. You assert that Mr. Villarreal was incorrect because the contract section 4.3.6 provides in part:

> Conduct of the Level I Meeting:
>
> a. The intent of the meeting is to focus on a solution to the specific allegation(s), issue(s) or problem(s). The parties shall attempt to define the issue, discuss interests, explore options, and if possible, agree to an outcome;

Because you were not afforded the opportunity to present your argument, you assert that section 4.3.6 was not met.

As a result of the Level I meeting the Administration and SCTA suggested the following as a draft compromise to your grievance:

> 1. The letter of reprimand shall be sealed and removed at a time certain (January 26, the end of the first semester of the school year 2000-2001) provided there are no future occurrences of a similar nature.
>
> 2. The evaluation form was changed to the correct form and Mr. Marsh had been shown the evaluation on the appropriate form before the deadline to file teacher evaluation for the Sacramento City Unified School District, therefore, this has become a moot point and the evaluation will stand as is.

You rejected this compromise.

On January 18, 2001, Mr. Villarreal sent you a letter explaining your options for responding to the Level 1 finding. He presented three options:

> 1. Doing nothing and the decision will stand.
>
> 2. Requesting to go to Level 2 to have the matter heard before a mediator based on the original grievance.
>
> 3. You also have the right to appeal on your own, without the interference or involvement of SCTA, to the principal or District designee if you are not satisfied.

On February 1, 2001, Mr. Villarreal sent to you a letter regarding your request to proceed to Level II. The letter stated that the "grievance rules do not provide for raising new issues that

were not previously raised in the Level I form." Also, he informed you that under "SCTA's policy you have a right to appeal or express your concerns to the SCTA board."

In response to the February 1st letter you sent to Mr. Villarreal a five-page letter. In the letter you state that although you were unhappy with the limited scope of the initial grievance, you relied upon the experience of both Mr. Villarreal and Mr. Rogers to present your case in its most favorable light. Also, you stated that the "union is fully aware of how outraged this whole episode has made me." Because of your outrage and because Mr. Villarreal and Mr. Rogers had your documentation, you urged them to present your case to the board and "try to justify why they have been negligent for the past eight months in not doing their job."

To voice your concerns over the lack of representation offered by SCTA, you called both the Regional and Statewide offices of the California Teacher's Association. Although you left messages, no one from either office returned your call.

In addition to asserting that SCTA breached its duty of fair representation in its handling of your grievance, you also assert that SCTA is not supportive of you in your disputes with students. SCTA is sending you "mixed messages" regarding the breaking up of fights. SCTA President Tom Rogers told you in writing not to break up fights under any circumstances. However, Article 11.1 of the collective bargaining agreement states:

> A teacher may use reasonable force, as is necessary, to protect himself/herself from attack, to protect another person or property, to quell a disturbance threatening physical injury to others, or to obtain possession of weapons or other dangerous objects upon the person or within control of a student.

In addition, in the charge you provide the following contract provisions with short parenthetical comments as evidence of SCTA's lack of support:

> 4.2.4 Grievance will be waived if not presented within 30 days after occurrence. (I informed the Union of many matters in violation of the contract, they failed to assist me in filing a grievance.)
>
> 4.2.6 Time allowances can be extended by mutual consent. (I agreed to no such extensions.)
>
> 4.3.3 If a grievance has been filed, the meeting should be held within 10 days after the grievance was filed (this did not happen.)
>
> 4.3.6 The level 1 meeting should focus on a solution to the specific allegations, issues, or problems. The parties should attempt to define the issue, discuss interests, explore options, and,

if possible, agree to an outcome. (the meeting did none of these things.)

4.4.1 A level 2 grievance needs to be filed within 10 days of receiving the level 1 decision. (I don't believe the union met this deadline.)

4.4.1.1 "A description of the specific grounds of the grievance, including names, dates, and places necessary for an understanding of the grievance". (the union failed to describe the specific grounds of the grievance.)

6.6 "District level committees shall be formed on an ad hoc basis to serve as the final authority for resolving disagreements between the evaluator and the evaluatee which may arise over the appropriateness of the evaluation criteria and / or ratings of less than "satisfactory".(this committee was never brought to my attention by the union.)

11.1 "A Teacher may use reasonable force, as is necessary, to protect himself, herself from attack, to protect another person or property, to quell a disturbance threatening physical injury to others, or to obtain possession of weapons or other dangerous objects upon the person or within control of a student."
(I was told in writing by the SCTA President, Tom Rogers, not to break up fights under any circumstances. I was told by the school Vice Principal s, Richard Markwell and Mary DeSplinter, not to block doorways, even in cases in which a student expressed his intentions to leave the classroom in order to physically fight another student. I was told by the VP, Richard Markwell not to send students to the office unless a fight was "blood and guts".)

Discussion

Your charge does not establish a prima facie violation of EERA. First, portions of the charge do not provide a clear and concise statement of the facts and conduct alleged to constitute an unfair practice. Second, where you do provide information to adequately allege an unfair practice, the conduct does not constitute a violation of EERA. Third, PERB does not have authority to enforce agreements between the parties.

PERB Regulation 32615(a)(5) requires, inter alia, that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." Thus, the charging party's burden includes alleging the "who, what, when, where and how" of an unfair practice. (State of California (Department of Food and Agriculture) (1994) PERB Decision No. 1071-S, citing United Teachers-Los Angeles (Ragsdale) (1992) PERB Decision

No. 944.) Mere legal conclusions are not sufficient to state a prima facie case. (Ibid.; Charter Oak Unified School District (1991) PERB Decision No. 873.)

You fail to establish that SCTA violated EERA by sending you "mixed messages" in regards to breaking up of fights. Although Tom Rogers told you not to break up fights under any circumstances and the contract provides that teachers may use "reasonable force, as necessary," you do not demonstrate the "who, what, when, where and how" of an unfair practice. From the information provided it is not possible to determine what section(s) of EERA was violated by this contradiction.

As Charging Party, you appear to allege that the exclusive representative denied you the right to 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 Respondent'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 omitted.]
>
> 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.]

You assert that SCTA violated its duty of fair representation by not arguing on your behalf or allowing you to argue on your own behalf during the Level I meeting. However, you do not show how Mr. Villarreal's action or inaction was arbitrary, discriminatory or in bad faith. Although you did not approve of the resolution at Level I, a compromise was reached which

addressed the issues in your grievance. Also, after the Level I meeting SCTA allowed you the opportunity to decide if you wished to proceed to Level II and or to address the SCTA board to express your dissatisfaction with SCTA's representation of you. None of the information you provide demonstrates that SCTA's actions were without a rational basis or devoid of honest judgment.

Finally, you assert that SCTA did not follow the collective bargaining agreement section 4.3.6 during the Level I meeting nor did they follow many other provisions of the contract. EERA section 3541.5(b) states:

> The board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of such an agreement that would not also constitute an unfair practice under this chapter.

In the instant charge, you specifically allege the SCTA failed to comply with the provisions of the collective bargaining agreement. However, as stated above you fail to present facts demonstrating a unfair practice under the EERA. Therefore PERB does not have the authority to enforce the collective bargaining agreement between SCTA and the District.

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 Friday, April 27, 2001, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Marie A. Nakamura
Board Agent

MAN