STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

JAMES ERIC FERGUSON, Charging Party, v. OAKLAND EDUCATION ASSOCIATION, Respondent.	Case No. SF-CO-638-E PERB Decision No. 1646 June 17, 2004

Appearances: William H. Hanson, Attorney, for James Eric Ferguson; California Teachers Association by Priscilla Winslow, for Oakland Education Association.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on an appeal brought by James Eric Ferguson (Ferguson) from a Board agent's dismissal of his unfair practice charge. The charge alleged that the Oakland Education Association (OEA) violated section 3544.9, and thereby violated section 3543.6(b), of the Educational Employment Relations Act (EERA)[1] by acting arbitrarily, discriminatorily and in bad faith .

After reviewing the entire record in this matter including the unfair practice charge, the warning and dismissal letters, the appeal and response, the Board issues the decision below.

BACKGROUND

Ferguson is employed by the Oakland Unified School District (District) as a teacher. He is fully credentialed at the secondary level in social sciences. He also holds a limited

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

authorization in physical education that permits him to teach "Introductory Physical Education" and "Sports and Games" to students in the ninth grade and below.

He has been employed by the District since 1992 but first taught at Castlemont High School in the 2000-2001 school year. He taught U.S. history and multicultural studies. In 2001-2002 he accepted an assignment to teach five physical education classes of ninth graders. For the 2002-2003 school year he was assigned three classes of physical education and two classes of study skills. The two classes of study skills were removed from his schedule within the first two weeks of school and he then was teaching only three classes while being paid for five.

Approximately one month later the District added two U.S. history classes to his schedule to relieve overcrowding in other classes. He was then teaching five classes.

On October 28, 2002, Ferguson filed a grievance about his teaching assignment. The grievance alleged this addition of the U.S. history classes violated Article 12.10.1.6 of the collective bargaining agreement between the District and the exclusive representative, OEA, of which Ferguson is a member. The collective bargaining agreement expires June 30, 2004.

Article 12.10.1.6 states, in relevant part:

> If a teacher is reassigned to another grade level or subject area, that teacher shall not be assigned another grade level or subject area for at least two (2) years, unless by mutual agreement.

Ferguson appealed his grievance to Level Two before leaving school on an occupational leave January 7, 2003, and was not released to return to work until August 25, 2003. He had two meetings with representatives of OEA and the District. The second meeting was a Level Three grievance. The second meeting was on May 7, 2003, and included Bruce Colwell (Colwell) from OEA, Ferguson, and Assistant Superintendent, Lewis Cohen (Cohen) from the District. Both Colwell and Cohen state there was agreement that the grievance was

settled at that meeting. Ferguson believes the agreement included not only that he would be assigned to a middle school to teach physical education but that he would be able to select the school from a number of choices.

As of June 20, 2003, there was only one opening in the District that met the criteria of boys' physical education at a middle school. That was at Cole Middle School (Cole). Since there were no choices, the District notified Ferguson that he was assigned to Cole for the coming school year.

Ferguson was upset that he had been assigned to Cole instead of having the opportunity to select his school assignment. There was multiple correspondence back and forth by e-mail between Colwell and Ferguson and Colwell and District representatives over the summer months. Finally, on September 9, Colwell wrote to Ferguson:

> You and I met with Lewis Cohen on May 7, 2003, while Cohen was still acting Director of HRD for OUSD. At that time a resolution to 2002-18 [the grievance] was reached and the agreement was confirmed in a letter to you from Cohen dated July 16, 2003. The agreement was that you would be assigned to a middle school, because your PE credential only allowed you to teach up to 9th grade, which includes grades 6 through 8, but not grades 10 through 12.

In September 2003, Ferguson filed a new grievance alleging his first grievance was not resolved. The second grievance was rejected because of the May 7, 2003, meeting agreement. Ferguson requested that OEA take the matters of his two grievances to arbitration. The request was denied. The first grievance had been filed by OEA on behalf of Ferguson. The second was filed by Ferguson. He alleges OEA refused to process it.

BOARD AGENT'S DISMISSAL

The Board agent found there was apparently a misunderstanding between the OEA representative and Ferguson regarding the finality of the settlement agreement at the May 7, 2003 meeting. This, in her opinion, did not rise to the level of a breach of the duty of fair representation. It was noted that correspondence provided by Ferguson indicated significant activity by the OEA on his behalf in addressing the concerns Ferguson had related to the District.

DISCUSSION

"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." (United Teachers of Los Angeles (Collins) (1982) PERB Decision No. 258.)

As a general rule, an exclusive representative enjoys a wide range of bargaining latitude. As the United States Supreme Court stated in Ford Motor Co. v. Huffman (1953) 345 U.S. 330, 338 [31 LRRM 2548]:

> Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.

Acknowledging the need for such discretion, PERB determined that an exclusive representative is not expected or required to satisfy all members of the unit it represents. (California School Employees Association and its Chapter 107 (Chacon) (1995) PERB Decision No. 1108.) Moreover, the duty of fair representation does not mean an employee organization is barred from making an agreement which may have an unfavorable effect on

some members, nor is an employee organization obligated to bargain a particular item benefiting certain unit members. (Ibid.; Los Rios College Federation of Teachers, CFT/AFT (Violett, et al.) (1991) PERB Decision No. 889 (Los Rios).) The mere fact that charging parties were not satisfied with the agreement is insufficient to demonstrate a prima facie violation. (Los Rios.)

Ferguson wanted to teach at a middle school. His OEA representative contacted several people within the District to confirm that the Cole position was, in fact, the only open position that fit with what Ferguson wanted to teach and the credential he held.

Arbitrary or Discriminatory

Ferguson pointed to other grievances OEA did take to arbitration but the Board agent appropriately distinguished those from this case. In those cases there were several teachers called into meetings with the principal and advised they were being transferred. Here, Ferguson was involved in multiple meetings with the District related to the first grievance he filed. A settlement of that grievance had been reached and he agreed with it until he received his school assignment.

Bad Faith

We also find there is no bad faith by OEA for refusing to pursue the grievances. A union may decline to handle a grievance if the employee rejects the settlement. (California State University, San Diego (1989) PERB Decision No. 781-H.) Therefore, the charge must be dismissed.

ORDER

The unfair practice charge in Case No. SF-CO-638-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Whitehead and Neima joined in this Decision.