

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



DEL M. GRACE,

Charging Party,

v.

BEAUMONT TEACHERS ASSOCIATION/CTA,

Respondent.

Case No. LA-CO-1411-E

PERB Decision No. 2260

April 26, 2012

Appearance: Anyiam Law Firm Inc. by Christian U. Anyiam, Attorney, for Del M. Grace.

Before Martinez, Chair; Dowdin Calvillo and Huguenin, Members.

DECISION

MARTINEZ, Chair: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by Del M. Grace of a PERB Office of the General Counsel's dismissal (attached) of her unfair practice charge. The charge, as amended, alleged that the Beaumont Teachers Association/CTA (Association) violated the Educational Employment Relations Act (EERA)¹ regarding the handling of a grievance. The issue raised by the allegations in the charge was whether the Association breached its duty of fair representation. The Board agent dismissed the charge, concluding that it failed to state a prima facie case.

The Board has reviewed the entire record in this matter and given full consideration to the issues raised on appeal and the arguments of the parties. Based on our review and consideration, the Board finds the Board agent's warning and dismissal letters to be well-reasoned, adequately supported by the record and in accordance with the applicable law. Accordingly, the Board hereby dismisses the charge, adopting the warning and dismissal letters

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

of the Board agent as the decision of the Board itself² as supplemented by the following brief discussion of issues raised by the appeal.

DISCUSSION

Pursuant to PERB Regulation 32635, subdivision (a),³ an appeal from dismissal shall:

- (1) State the specific issues of procedure, fact, law or rationale to which the appeal is taken;
- (2) Identify the page or part of the dismissal to which each appeal is taken;
- (3) State the grounds for each issue stated.

To satisfy the requirements of this regulation, the appeal must sufficiently place the Board and the respondent “on notice of the issues raised on appeal.” (*State Employees Trades Council United (Ventura, et al.)* (2009) PERB Decision No. 2069-H; *City & County of San Francisco* (2009) PERB Decision No. 2075-M.) An appeal that does not reference the substance of the Board agent’s dismissal fails to comply with PERB Regulation 32635, subdivision (a). (*United Teachers of Los Angeles (Pratt)* (2009) PERB Order No. Ad-381; *Lodi Education Association (Huddock)* (1995) PERB Decision No. 1124; *United Teachers – Los Angeles (Glickberg)* (1990) PERB Decision No. 846.) Likewise, an appeal that merely reiterates facts alleged in the unfair practice charge does not comply with PERB Regulation 32635, subdivision (a). (*Contra Costa County Health Services Department* (2005)

² Regarding reference in the warning and dismissal letters to the Beaumont Unified School District’s (District) denial of the grievance at level II on or about July 20, 2009, it should be noted that there were two grievances. One grievance concerned a performance evaluation for the 2007-2008 school year and the other concerned a performance evaluation for the 2008-2009 school year. The former was denied by the District because it lacked merit and was filed in an untimely fashion. The latter was denied by the District for lack of merit only. This note is provided for factual clarification only and effects no change in either the legal analysis of the charge as set forth by the Board agent in the warning and dismissal letters or the outcome of this appeal.

³ PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

PERB Decision No. 1752-M; *County of Solano (Human Resources Department (2004) PERB Decision No. 1598-M.)*

Here, the appeal consists entirely of allegations and arguments previously made at the charge processing stage of this proceeding. The appeal advances no argument that was not considered and addressed by the Board agent in processing the charge. In fact, much of the appeal repeats in verbatim text from a document that accompanied the amended charge. The appeal does not reference any portion of the Board agent's determination or otherwise state the specific issues of procedure, fact, law or rationale to which the appeal is taken. Nor does it identify the page or part of the dismissal to which the appeal is taken or state the grounds. Thus, the appeal is subject to dismissal on this ground alone. (*City of Brea (2009) PERB Decision No. 2083-M.*)

ORDER

The unfair practice charge in Case No. LA-CO-1411-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Calvin Dowdillo and Huguenin joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
700 N. Central Ave., Suite 200
Glendale, CA 91203-3219
Telephone: (818) 551-2805
Fax: (818) 551-2820



September 6, 2011

Christian U. Anyiam, Esq.
Anyiam Law Firm, Inc.
10737 Laurel Street, Suite 102
Rancho Cucamonga, CA 91730

Re: *Del M. Grace v. Beaumont Teachers Association/CTA*
Unfair Practice Charge No. LA-CO-1411-E
DISMISSAL LETTER

Dear Mr. Anyiam:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 31, 2009 and amended on August 25 and 26, 2011. Del M. Grace (Ms. Grace or Charging Party) alleges that the Beaumont Teachers Association/CTA (Association or Respondent) violated the Educational Employment Relations Act (EERA or Act)¹ by failing in its duty of fair representation regarding the handling of a grievance.

Charging Party was informed in the attached Warning Letter dated August 11, 2011, that the above-referenced charge did not state a prima facie case. Charging Party was advised that, if there were any factual inaccuracies or additional facts that would correct the deficiencies explained in that letter, the charge should be amended. Charging Party was further advised that, unless the charge was amended to state a prima facie case or withdrawn prior to August 18, 2011, the charge would be dismissed.

After receiving the Warning Letter, Ms. Grace contacted the undersigned and was granted an extension of time to file an amended charge until August 25, 2011. On August 24, 2011, I had a telephone conversation with Ms. Grace and answered a question regarding service of the amended charge on the Respondent. On the morning of August 25, 2011, I had another telephone conversation with Ms. Grace, wherein she stated that the amended charge would be filed via facsimile that afternoon. Shortly thereafter, I received a telephone call from Christian Anyiam, who stated that he had been retained as counsel for Ms. Grace. Mr. Anyiam requested an additional extension of time of between five and seven days to respond to the Warning Letter. I stated to Mr. Anyiam that I had had several conversations with Ms. Grace, including most recently that morning, and Ms. Grace had not indicated either that she needed additional time to respond to the Warning Letter, or that she had retained counsel. To the contrary, Ms. Grace had stated that the amended charge would be filed that afternoon. I reminded Mr. Anyiam that Ms. Grace had already been granted an extension of time, and thus

¹ EERA is codified at Government Code section 3540 et seq. The text of the EERA and PERB Regulations may be found at www.perb.ca.gov.

I did not find good cause under the circumstances to grant the additional extension he sought. Shortly after that conversation ended, I received a conference call from both Ms. Grace and Mr. Anyiam. Ms. Grace confirmed that Mr. Anyiam now represented her. I granted a one-day additional extension of time until August 26, 2011 to file an amended charge. Later that afternoon, PERB received via facsimile from Mr. Anyiam a document "in response to" the Warning Letter. On August 26, 2011, an amended charge was timely filed. I consider these documents together to constitute the amended charge.

Information Provided in the Amended Charge

As summarized in the Warning Letter, Ms. Grace filed a grievance on or about June 5, 2009 with the Beaumont Unified School District (District) regarding alleged violations of the evaluation procedure in the collective bargaining agreement (CBA) between the District and the Association. Association representatives accompanied Ms. Grace to grievance meetings at levels I and II. The District denied the grievance at level II based on the assertion that it was initially untimely filed outside of the 20-day period set forth in the CBA. The Association failed to timely file the grievance at level III within five days of the denial at level II, and informed Ms. Grace of the missed deadline.

In the amended charge, Charging Party asserts that the District's denial of the grievance based on an untimely filing was incorrect, because the CBA provides that a grievance must be filed within 20 business days, and thus her filing was timely. Charging Party argues that the Association should have advocated for her on this ground. Charging Party also argues that it demonstrates bad faith for a union to miss an important filing deadline, which has the effect of foreclosing any right of the employee to pursue the violation. Charging Party also asserts that the conduct of the Association in this matter shows that it: "deliberately missed the deadline to file a level III grievance, then happily informed the affected member that it missed the deadline...."

For the reasons to follow, the charge, as amended, fails to correct the deficiencies outlined in the Warning Letter.

Discussion

As thoroughly discussed in the Warning Letter, a union's duty of fair representation extends to grievance handling. (*United Teachers of Los Angeles (Collins)* (1982) PERB Decision No. 258.) The Warning Letter informed Charging Party that PERB has declined to find a breach of a union's duty of fair representation by merely negligent acts, such as missing grievance filing deadlines. (*IBEW Local 1245 (Flowers)* (2009) PERB Decision No. 2079-M; *United Teachers-Los Angeles (Ragsdale)* (1992) PERB Decision No. 944.) The Warning Letter also discussed that where a CBA provides an employee the right to present grievances without the aid of the union, PERB has found that a union's failure to file a grievance does not demonstrate a breach of its fair representation duty. (*Service Employees International Union, Local 99 (Arteaga)* (2008) PERB Decision No. 1991.) The Warning Letter noted that in this case, the CBA between the Association and the District provides that employees can present

grievances without the aid of the Association, and that even though the Association accompanied her to grievance meetings, Ms. Grace filed the grievance herself at levels I and II. The Charging Party's assertion that the Association's failure to file the grievance at the next stage of processing had the effect of "foreclosing" her right to pursue the claim is therefore factually unsupported in the record. Thus, even if the Association acted negligently in missing the filing deadline for level III, such conduct does not demonstrate a breach of the Association's representational duty. Ms. Grace asserts that the Association "deliberately" missed the deadline and "happily" informed her of such. Pleading or raising bare allegations, without providing specific factual information in support thereof, does not meet the Charging Party's burden of stating a prima facie case. (*California School Employees Association (Lohmann)* (1991) PERB Decision No. 898.) There are no facts demonstrating that the Association's conduct was arbitrary, discriminatory, or in bad faith.

Accordingly, for the reasons discussed herein and for the facts and reasons supplied in the August 11, 2011 Warning Letter, the charge does not state a prima facie case and is therefore dismissed.

Right to Appeal

Pursuant to PERB Regulations,² Charging Party 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, § 32635, subd. (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 during a regular PERB business day. (Cal. Code Regs, tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of PERB 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. (Cal. Code Regs, tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(916) 322-8231
FAX: (916) 327-7960

² PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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, § 32635, subd. (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, § 32140 for the required contents.) The document will be considered properly "served" when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs, tit. 8, § 32135, subd. (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, § 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,

M. SUZANNE MURPHY
General Counsel

By 

Valerie Pike Racho
Regional Attorney

Attachment

cc: Robert E. Lindquist, Attorney

PUBLIC EMPLOYMENT RELATIONS BOARD



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August 11, 2011

Del M. Grace
29120 Sandlewood Place
Highland, CA 92346

Re: *Del M. Grace v. Beaumont Teachers Association/CTA*
Unfair Practice Charge No. LA-CO-1411-E

WARNING LETTER

Dear Ms. Grace:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 31, 2009. Del M. Grace (Ms. Grace or Charging Party) alleges that the Beaumont Teachers Association/CTA (Association or Respondent) violated the Educational Employment Relations Act (EERA or Act)¹ by failing in its duty of fair representation. Investigation of the charge revealed the following relevant information.²

Facts as Alleged

At all relevant times, Ms. Grace was employed as a probationary Nurse Practitioner in the Beaumont Unified School District (District) and included in a bargaining unit exclusively represented by the Association. The District and the Association were parties to a collective bargaining agreement (CBA) in effect through June 30, 2010.

On or about June 5, 2009,³ Ms. Grace filed a grievance over an evaluation that she had received on or around May 12. Ms. Grace contends the evaluation contained unsupported, derogatory information. The crux of the grievance is that Ms. Grace was not observed on three occasions in support of the evaluation as required under the CBA. Ms. Grace states that under the terms of the CBA, teachers are required to be observed formally, but there is no parallel requirement that non-teaching unit members be formally observed. An informal grievance meeting was held on or around June 3, wherein Ms. Grace was accompanied by an Association representative.

¹ EERA is codified at Government Code section 3540 et seq. The text of the EERA and PERB Regulations may be found at www.perb.ca.gov.

² The Association filed a position statement in response to the charge on January 28, 2010. A Board agent is permitted to consider undisputed facts supplied by a respondent during charge investigation. (*Service Employees International Union #790 (Adza)* (2004) PERB Decision No. 1632-M.)

³ All dates herein refer to 2009 unless stated otherwise.

Or about June 17, the District denied the grievance at level I for lack of merit/no CBA violation. On or about June 25, Ms. Grace filed the grievance at level II, seeking additional review. On or about July 8, a level II meeting was held. It is not clear whether the Association attended this meeting. On or about July 20, the District denied the grievance at level II based on an initial untimely filing (conduct occurred on May 12 and grievance was filed June 5) outside of the 20-day timeframe in the CBA.

On or about August 26, Association representative Trina Brown left a voice-mail message for Ms. Grace stating that she had missed the deadline for filing the grievance at level III, which apparently required such filing within five days of the decision rendered at level II.

The CBA grievance procedure at Article 10.6.5 provides:

A unit member may at any time present grievances to the District, and have such grievances adjusted, without the intervention of the Association.

Ms. Grace states that the Association was negligent "in not providing an appropriate and fair process to utilize the Standards already in place to complete evaluations for Non-Teaching licensed unit members at [the District], i.e. Nurses, Psychologist, Speech Therapist."

The above-discussed facts do not demonstrate a prima facie violation of EERA for the reasons discussed below.

Discussion

Charging Party has alleged that the exclusive representative denied Charging Party 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.

(*Id.* at Proposed Decision, p. 8.)

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.

(*Reed District Teachers Association, CTA/NEA (Reyes)* (1983) PERB Decision No. 332, p. 9, quoting *Rocklin Teachers Professional Association (Romero)* (1980) PERB Decision No. 124; emphasis in original.)

In *Coalition of University Employees (Buxton)* (2003) PERB Decision No. 1517-H, the Board, following federal precedent, held that a union's "mere negligence" may breach the duty of fair representation only "in cases in which the individual interest at stake is strong and the union's failure to perform a ministerial act completely extinguishes the employee's right to pursue his claim." (Quoting *Dutrisac v. Caterpillar Tractor Co.* (9th Cir.1983) 749 F.2d 1270, 1274.) Typically, however, mere negligence in grievance handling—such as missing filing deadlines—does not constitute a violation of the duty of fair representation. (*IBEW Local 1245 (Flowers)* (2009) PERB Decision No. 2079-M; *United Teachers-Los Angeles (Ragsdale)* (1992) PERB Decision No. 944.) Where a CBA provides an employee the right to present grievances without the aid of the union, PERB has found that the union's failure to file a grievance does not demonstrate a breach of its fair representation duty. (*Service Employees International Union, Local 99 (Arteaga)* (2008) PERB Decision No. 1991.)

Ms. Grace does not allege, and the facts in the charge do not demonstrate, any conduct by the Association that can be deemed arbitrary, discriminatory, or in bad faith. Furthermore, Ms. Grace filed the grievance herself at levels I and II as permitted under the CBA. Therefore, the Association's failure to file the grievance at level III, even if negligent, did not extinguish Ms. Grace's right to pursue her claim and cannot establish a breach of the duty of fair representation under the authorities discussed above.

To the extent that Ms. Grace alleges the Association's failure to assert her right under the CBA to be formally observed by the District in support of her performance evaluation amounts to "negligence," this also does not demonstrate a violation of the duty of fair representation. A union is not required to satisfy all unit members, is not barred from making an agreement that has an unfavorable effect on some unit members, and is not obligated to bargain an item that will benefit certain unit members only. (*California School Employees Association & its Chapter 168 (Gibson)* (2010) PERB Decision No. 2128.)

In conclusion, the facts in the charge do not establish a violation of the Association's duty of fair representation. Accordingly, the charge must be dismissed.

For these reasons the charge, as presently written, does not state a prima facie case.⁴ If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, Charging Party may 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 an authorized agent of 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 an amended charge or withdrawal is not filed on or before August 18, 2011,⁵ PERB will dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,



Valerie Pike Racho
Regional Attorney

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⁴ In *Eastside Union School District* (1984) PERB Decision No. 466, the Board explained that a prima facie case is established where the Board agent is able to make "a determination that the facts as alleged in the charge state a legal cause of action and that the charging party is capable of providing admissible evidence in support of the allegations. Consequently, where the investigation results in receipt of conflicting allegations of fact or contrary theories of law, fair proceedings, if not due process, demand that a complaint be issued and the matter be sent to formal hearing." (*Ibid.*)

⁵ A document is "filed" on the date the document is **actually received** by PERB, including if transmitted via facsimile. (PERB Regulation 32135.)