

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



TERESA SANDERS,

Charging Party,

v.

LOS ANGELES COUNTY EDUCATION
ASSOCIATION,

Respondent.

Case No. LA-CO-1465-E

PERB Decision No. 2264

May 21, 2012

Appearance: Teresa Sanders, on her own behalf.

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

DECISION

DOWDIN CALVILLO, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal from the dismissal of an unfair practice charge by PERB's Office of the General Counsel. The charge alleged that the Los Angeles County Education Association (Association) breached its duty of fair representation under section 3544.9, thereby violating section 3543.6(b) of the Educational Employment Relations Act (EERA)¹ by failing to adequately represent Teresa Sanders (Sanders) after her employer, the Los Angeles County Office of Education (LACOE), removed her from working at two school sites.

The Board has reviewed the entire record in this case. Based upon that review, the Board affirms the dismissal of the charge for the reasons set forth below.

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

FACTUAL SUMMARY

Sanders is employed by the LACOE as a school nurse. Although not entirely clear, it appears from the record before us that Sanders is assigned to work at multiple schools within the school district. No information was provided concerning Sanders's specific assignments or work hours. She alleges that, during the year prior to filing the instant charge, she has been retaliated against by LACOE "for advocating for students and the public safety by reporting health violations." Sanders alleges that she has been "banned" from two school sites where she had previously reported on teachers who teach there.

On or about May 21, 2010, an incident occurred in which Sanders alleged a para-educator complained to LACOE that Sanders had falsely accused her (the para-educator) of child abuse. The charge alleges that the para-educator gave Sanders' personal cell phone number to the parent of the child involved. After Sanders contacted the Association for assistance, Association representative Lori Hunzeker (Hunzeker) met with Sanders and attempted to assist her with her concerns. Hunzeker asked Sanders to provide more information about her concerns. On June 16, 2010, Hunzaker and Association representative Zoila Gallegos attended a meeting with LACOE representatives for the purpose of allowing Sanders to discuss the May 21, 2010 incident. Sanders asserts that LACOE said that it would complete a fact-finding investigation and resolve the issue over the summer with a written resolution. Sanders did not receive a written resolution, but instead received a "conference summary" that she asserts cast her in a negative light.²

² The "conference summary" appears to be a memorandum dated June 16, 2010 that summarized the meeting, listed six steps to be taken to address the situation, and scheduled another meeting after additional conferences were held during the week of June 28, 2010. The memorandum does not say anything about Sanders's work assignment. Sanders does not articulate the manner in which the memorandum casts her in a negative light.

Following this incident, Sanders was informed that she was being removed from two classrooms at two different schools, except in cases of emergency. Sanders believed she was removed from these schools because of the incident with the para-educator and because she filed reports on teachers and the schools. Sanders understood this to be a temporary arrangement. An e-mail dated July 22, 2010 from LACOE representative Joyce Davis states that Sanders's assignment has been modified to exclude coverage for students in two specific classrooms at the two schools, except in case of emergency.

Sanders continued to communicate with the Association about her reassignment. In an e-mail dated August 3, 2010, Association representative Faith Brandstetter informed Sanders that she was working on her case and that "I am trying to make a case for you but so far no go. I need more." Sanders alleges that the Association informed her that it "did not see a violation' of [her] rights" and that she "didn't appear to have a case," but also informed her that there appeared to be a "contract violation of the reassignment process."

On or about September 27, 2010, LACOE instructed Sanders not to go to the two school sites "for any reason at any time" unless there is a medical emergency requiring her assistance. A confirming email states that the arrangement would be revisited in December 2010. The charge does not allege any facts showing that this change in assignment had any impact on Sanders's wages, hours, or other terms and conditions of employment.

Believing that LACOE was retaliating against her for having filed reports involving the two school sites at issue, Sanders again contacted the Association and asked to see an attorney. On October 6, 2010, Sanders met with attorney Rick Schwab (Schwab), provided by the Association, who "basically told [her] to do nothing other than write a contrite letter to the county." Sanders alleges that Schwab also told her that her re-assignment was "nothing

unusual” and “probably not grievable,” but that the September 27, 2010 directive was “‘problematic’ from a legal standpoint.”

Hunzeker prepared a draft grievance on Sanders’ behalf over the reassignment issue. On October 20, 2010, Hunzeker sent an e-mail to Sanders informing her that she had given the draft grievance to Brian Christian (Christian), chair of the Association’s grievance committee. She also forwarded Sanders a copy of an email she sent to Christian and other officials informing them that Sanders was frustrated with the Association’s lack of response to her calls and emails and asking for their support in resolving issues with Sanders and other bargaining unit nurses. The e-mail also asks Christian to start the grievance process and states, “It is my understanding that she does have the right to pursue the process, regardless of LACE/CTA’s assessment of probable outcome.”

On December 2, 2010, Sanders inquired with Christian by e-mail about the status of her grievance. Christian responded that he would contact labor relations and stated, “We are backed up and it is a difficult time of year to get things scheduled. We may not be able to get it on the calendar until January.” Based upon these communications, Sanders believed the grievance had been filed in October 2010. However, at an Association meeting on February 10, 2011, Christian told Sanders, “[i]t doesn’t look like you really have a grievance at this time.” According to Sanders, she learned at that point that no grievance had been filed.

In the meantime, on January 26, 2010, Hunzeker provided Sanders with a copy of a letter dated January 25, 2010, that appears to have been directed to LACOE administrators and requests resolution of Sanders’ reassignment issues. Sanders attended several meetings at LACOE’s request, but has refused to attend additional meetings because she “lost faith in the process and felt deceived, unsupported and maligned.”

BOARD AGENT'S DECISION

The Board agent dismissed the charge, finding that it failed to state a prima facie case of violation of the duty of fair representation.

CHARGING PARTY'S APPEAL

On appeal, Sanders asserts that the charge stated a prima facie violation of the duty of fair representation based upon the Association's failure to adequately represent her in challenging her reassignment by LACOE.

DISCUSSION

EERA section 3544.9 imposes an obligation on the exclusive representative to fairly represent each and every employee in the bargaining unit. The duty of fair representation imposed on the exclusive representative extends to grievance handling. (*Fremont Unified District Teachers Association, CTA/NEA (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, Sanders must show that the Association's conduct was arbitrary, discriminatory, or in bad faith. 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. [Citation.]

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.)

The Board has held that a union's decision not to take a grievance to arbitration is lawful where a rational basis for the decision exists. (*Castro Valley Unified School District* (1980) PERB Decision No. 149.) Accordingly, PERB will dismiss a charge alleging a violation of the duty of fair representation if it is shown that a union has made an honest, reasonable determination that the grievance lacks merit. (*Sacramento City Teachers Association (Fanning, et al.)* (1984) PERB Decision No. 428.) In determining whether that standard is met, PERB does not determine whether the union's decision was correct but whether it "had a rational basis, or was reached for reasons that were arbitrary or based upon invidious discrimination." (*Ibid.*; see *Vaca v. Sipes* (1967) 386 U.S. 171, 195 [holding that "a breach of the duty of fair representation is not established merely by proof that the underlying grievance was meritorious"].) The burden is on the charging party to show how a union abused its discretion; it is not the union's burden to show that it properly exercised its discretion. (*United Teachers - Los Angeles (Wylar)* (1993) PERB Decision No. 970.)

In addition, the duty of fair representation attaches only when the union possesses the exclusive means by which an aggrieved employee can obtain a particular remedy. (*County of San Diego* (2008) PERB Decision No. 1989-M.) Thus, in the absence of evidence that the exclusive representative's negligence foreclosed any remedy for the grievant, "a breach of the duty of fair representation is not stated merely because an exclusive representative declines to proceed or negligently forgets to file a timely appeal of a grievance." (*Service Employees*

International Union, Local 99 (Arteaga) (2008) PERB Decision No. 1991, citing *SEIU Local 99 (Jones)* (2007) PERB Decision No. 1882 and *San Francisco Classroom Teachers Association, CTA/NEA (Bramell)* (1984) PERB Decision No. 430; see also *United Teachers of Los Angeles (Strygin)* (2010) PERB Decision No. 2149 [failure of the exclusive representative to file a grievance does not rise to the level of a breach of the duty of fair representation, where the employee failed to file a grievance on his own behalf and the union's failure to file did not completely extinguish his right to file a grievance].)

Sanders asserts that the Association breached its duty of fair representation by failing to file a grievance on her behalf against LACOE concerning her reassignment. A union has the discretion to decide in good faith that even a meritorious grievance should not be pursued. (*Los Rios College Federation of Teachers (Deglow)* (1996) PERB Decision No. 1133 [decisions not to pursue grievances, even if well-founded, were not unlawful in and of themselves, in the absence of showing that union's actions were without a rational basis and devoid of honest judgment]; *AFT Part-Time Faculty United, Local 6286 (Peavy)* (2011) PERB Decision No. 2194 [union did not breach of duty of fair representation when it failed to take grievance to arbitration based upon mediator's determination that grievant would likely not succeed and union's determination that issues would be better addressed in negotiations rather than risking loss at arbitration].) Absent evidence of arbitrary, discriminatory or bad faith conduct, a union's decision to conduct its representation in a manner contrary to the wishes of a bargaining unit employee does not violate the duty of fair representation. (*International Brotherhood of Electrical Workers, Local 1245 (Gallardo)* (2010) PERB Decision No. 2146-M.)

The facts alleged in the charge, as amended, indicate that the Association assigned at least three representatives, including an attorney, to assist Sanders in resolving her dispute with LACOE. Although they communicated with LACOE on her behalf, they also repeatedly

informed her that LACOE's decision to "reassign" her by removing her from working at two school sites likely did not constitute a basis for filing a grievance. Sanders has not alleged facts showing that the Association's decision not to file a grievance was arbitrary, discriminatory or lacking in good faith, or that it was without a rational basis and devoid of honest judgment. In addition, the charge fails to allege facts showing that the Association's failure to file a grievance foreclosed Sanders from pursuing a remedy herself. Instead, Hunzeker's October 20, 2010 email notifying Sanders that the draft grievance had been forwarded to Christian acknowledges that Sanders had the right to file a grievance herself. Even if Sanders erroneously believed that the Association filed on her behalf, the charge fails to allege any facts showing that the Association's failure to do so was arbitrary, discriminatory or lacking in good faith. Accordingly, the charge fails to establish a prima facie violation of the duty of fair representation.

ORDER

The unfair practice charge in Case No. LA-CO-1465-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chair Martinez and Member Huguenin joined in this Decision.