STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

LOREENA LYNN COLLINS, Charging Party, v. OXNARD FEDERATION OF TEACHERS, Respondent.	Case No. LA-CO-1417-E PERB Decision No. 2266 May 25, 2012

Appearance: Law Office of Harry F. Berman by Harry F. Berman, Attorney, for Loreena Lynn Collins.

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

DECISION

MARTINEZ, Chair: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Loreena Lynn Collins (Collins) from a dismissal (attached) of an unfair practice charge by PERB's Office of the General Counsel. The charge alleged that the Oxnard Federation of Teachers (Federation) violated the Educational Employment Relations Act (EERA)[1] by refusing to arbitrate a grievance on Collins' behalf and by making a threatening statement. The charge alleged that this conduct violated EERA section 3543.6 and breached the Federation's duty of fair representation. The Office of the General Counsel dismissed the charge for failure to state a prima facie case.

We have reviewed the entire record in this case and given full consideration to the appeal. Based on that review, the Board finds the warning and dismissal letters to be well-reasoned, adequately supported by the record and in accordance with the applicable law.

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

Accordingly, the Board affirms the dismissal of the charge and hereby adopts the warning and dismissal letters as the decision of the Board itself as supplemented below.

DISCUSSION

Pursuant to PERB Regulation 32635, subdivision (a),[2] 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 – 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) PERB Decision No. 1752-M; *County of Solano (Human Resources Department* (2004) PERB Decision No. 1598-M.)

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

Here, the appeal[3] consists of a one-page letter (appeal letter) plus a repaginated effective duplicate of the seven-page supplement (supplement) to the amended charge. There appears to be only one discernible difference between the version of the supplement filed with the amended charge and the version of the supplement filed with the appeal letter. In the version filed with the amended charge, the first sentence states: "This is the first amendment to the above referenced case." In the version filed with the appeal letter, the first sentence states: "This is our appeal of dismissal to the above referenced case." Collins asserts in the appeal letter that she submitted "our entire amended complaint as the basis of our appeal." As stated above, an appeal that merely reiterates facts alleged in the unfair practice charge does not comply with PERB Regulation 32635, subdivision (a).

Collins also asserts in the appeal letter that the dismissal misstates the basic issues of the case by focusing on the personal behavior of the District administrators and Federation officials. We disagree with Collins' characterization of the dismissal. The dismissal properly addresses whether the factual allegations of the charge state any possible prima facie case. The appeal does not reference any particular portion of the dismissal 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.)

Finally, Collins asserts that the Office of General Counsel "capriciously" dismissed her case, speculating that it was because of workload, time lag or "at the behest of the union, or district counsel." There is no merit to this claim.

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[3] Collins filed a companion charge against the Oxnard Union High School District (District). Collins also appealed from the dismissal of that charge. Except for the width of the margins, the appeal document filed in that case appears identical to the appeal document filed in this case. The Board affirmed the dismissal in PERB Case No. LA-CE-5421-E.

ORDER

The unfair practice charge in Case No. LA-CO-1417-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Dowdin Calvillo and Huguenin joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

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June 21, 2011

Harry F. Berman, Esquire
National Association of Government Employees
1819 Knoll Drive, #17
Ventura, CA 93003

Re: *Loreena Lynn Collins v. Oxnard Federation of Teachers*
Unfair Practice Charge No. LA-CO-1417-E
DISMISSAL LETTER

Dear Mr. Berman:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on January 29, 2010 and amended on June 8, 2011. Loreena Lynn Collins (Ms. Collins or Charging Party) alleges that the Oxnard Federation of Teachers (Union or Respondent) violated section 3543.6 of the Educational Employment Relations Act (EERA or Act)[1] by refusing to arbitrate a grievance on her behalf and making a threatening statement.

Charging Party was informed in the attached Warning Letter dated May 13, 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 May 27, 2011, the charge would be dismissed. Charging Party requested and received an extension of time to file an amended charge through June 10, 2011 and timely did so on June 8, 2011.

The facts in the charge as originally filed were fully set forth in the attached Warning Letter. Briefly, the crux of the unfair practice charge is that Ms. Collins' working hours were reduced by the Oxnard Union High School District (District) allegedly in violation of the collective bargaining agreement between the Union and the District. The Union grieved the issue on Ms. Collins' behalf, but by December 2009 letter to Ms. Collins, declined to pursue the grievance to arbitration. In sum, the amended charge provides the following additional relevant information.[2]

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[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 amended charge also includes information on layoff practices at another school district and layoff procedures that were followed in the District in 2003. This information is not germane to determining whether the instant charge states a prima facie case of a breach of the Union's duty of fair representation.

E-mail messages from Union representative Ko Tamura to Ms. Collins in August 2009 acknowledge that the Union's position regarding the number of hours that should have been guaranteed to Ms. Collins by the District in Fall 2009 are the hours that she worked for the previous two years.

On September 18, 2009, Union President Jim Rose sent an e-mail message to employees explaining the magnitude of the District's budget shortfall and stating that the Union and the District were negotiating over furlough days to avoid layoffs.

In November 2009, Mr. Tamura warned in a Union newsletter that:

> The cuts the Adult School has endured are unarguably severe and there is still the possibility of further cuts in the future. Hard decisions, not necessarily popular ones, may have to be made and [the Union] will continue to work in the best interest of the Adult Ed unit.

Ms. Collins alleges that the Union and the District had reached a pre-determined conclusion regarding her case before the grievance mediation in December 2009 because: (1) Mr. Tamura spent the entire mediation typing on his computer and did not participate or provide input; (2) the District's counsel was "derisive and insulting to Ms. Collins,"[3] misquoted the Education Code, and did not attempt any meaningful settlement; and (3) at the conclusion of the meeting District representatives,[4] Mr. Tamura, and Mr. Rose "all left the building together for lunch."

Regarding the statement made by Mr. Rose that Ms. Collins could expect repercussions from the District should she choose to pursue the grievance on her own, and the subsequent conversation between Ms. Collins and Assistant Principal Grisafe wherein Mr. Grisafe implied that students had complained about Ms. Collins, the amended charge states:

> Given the conduct of Mr. Parham [District counsel], Mr. Grisafe, Mr. Rose, and Mr. Tamura during the mediation, coupled with the threat by Mr. Rose and the classroom visit by Mr. Grisafe, it is clear that the district and the union were colluding to ensure the intimidation of an employee with an active and legitimate grievance/unfair labor practice against the district.

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[3] The amended charge also states that the District's counsel "spent a good deal of time pounding the table and shouting loud enough for people in other rooms to hear him...."

[4] Including Oxnard Adult School Assistant Principal John Grisafe, who is the administrator that later alluded to student complaints being made about Ms. Collins' teaching techniques.

In July 2010, the Union and the District executed a side-letter agreement regarding "clarifying the staffing process" due to reductions in adult school staffing. This letter defined "longevity" and "seniority" and also defined priorities for assignment based on tenure and seniority. It is not clear what Ms. Collins alleges is an EERA violation regarding this side-letter. The amended charge states that the side-letter continues to misapply relevant Education Code provisions, it was created after Ms. Collins' grievance and unfair practice charges, and the District and the Union "are attempting to disregard her rights under the effective collective bargaining agreement in place at the time of her grievance."

For the reasons to follow, the charge, as amended, does not correct the deficiencies outlined in the Warning Letter and the charge must be dismissed.

Discussion

1. PERB's Jurisdiction and Standing of the Charging Party

The amended charge continues to allege violations of the Education Code and sections of EERA that protect the bargaining rights of employee organizations. As stated in the Warning Letter, these allegations must be dismissed from the charge for PERB's lack of jurisdiction and the Charging Party's lack of standing. (*San Francisco Unified School District* (2009) PERB Decision No. 2040; *Regents of the University of California* (2010) PERB Decision No. 2153-H.)

2. The Duty of Fair Representation

As fully discussed in the Warning Letter, in order to prevail on a theory of a union's breach of the duty of fair representation, a charging party must show that a union acted in an arbitrary, discriminatory, or bad faith manner. (*United Teachers of Los Angeles (Collins)* (1982) PERB Decision No. 258.) The facts provided in the amended charge still do not meet this standard. The Warning Letter concluded that the Union, having explained its specific rationale to Ms. Collins for declining to arbitrate, had not acted in an arbitrary manner. (*Reed District Teachers Association, CTA/NEA (Reyes)* (1983) PERB Decision No. 332.) The Warning Letter further explained that because an employee organization is not bound to take a bargaining position that could result in greater gains for a particular classification (*Union of American Physicians & Dentists (Meenakshi, et al.)* (2006) PERB Decision No. 1846-S), nor does it violate its fair representation duty by taking a position that may unfavorably affect some members (*Orange Unified Education Association & California Teachers Association (Rossmann)* (2003) PERB Decision No. 1533), the Union's conduct in this instance could not be found discriminatory or in bad faith. Ms. Collins argues that the fact that Mr. Tamura wrote that employees should expect further cuts in the November 2009 newsletter, coupled with Mr. Tamura's lack of input at the mediation, and District and Union representatives leaving together for lunch, demonstrates that the Union had "decided to side with the District." These attenuated facts, however, cannot reasonably support an inference of bad faith in the Union's decision not to pursue arbitration in this matter.

Furthermore, to the extent that Ms. Collins alleges that the Union's negotiating the side letter is adverse to her interests, this allegation does not demonstrate a violation of EERA. In general, unions enjoy wide latitude in contract negotiations. Consequently, a union is not required to satisfy all union members, is not barred from making an agreement that has an unfavorable effect on some union 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.) Thus, this allegation must be dismissed.

3. Interference

As explained in the Warning Letter, Mr. Rose's comments about possible repercussions from the District should Ms. Collins pursue her grievance did not threaten any adverse action by the Union and thus do not constitute interference with protected conduct. (*California Faculty Association (Hale, et al.)* (1988) PERB Decision No. 693-H.) The Warning Letter also stated that the Union cannot be held responsible for conduct by District agents. (*Union of American Physicians & Dentists (Menaster)* (2007) PERB Decision No. 1918-S.) The amended charge argues that the Union's and the District's behavior at the mediation in combination with Mr. Rose's statement and Mr. Grisafe's actions demonstrate collusion between the District and the Union and an attempt to intimidate her. The facts regarding District and Union representatives having lunch together after the mediation and failing to reach a grievance settlement satisfactory to Ms. Collins do not approach evidence of collusion. As stated in the Warning Letter, Mr. Rose does not exercise any control over Ms. Collins' employment relationship with the District, thus, there is no basis to find that his comments would reasonably tend to discourage her from pursuing her claim against the District. (*California Faculty Association (Hale, et al.)*, *supra*, PERB Decision No. 693-H.)

Conclusion

For all of the above reasons and for the facts and reasons supplied in the May 13, 2011 Warning Letter, this charge does not state a prima facie case and must be dismissed.

Right to Appeal

Pursuant to PERB Regulations,[5] 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).)

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

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

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: Jeffrey R. Boxer, Attorney
Loreena Lynn Collins

PUBLIC EMPLOYMENT RELATIONS BOARD

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May 13, 2011

Harry F. Berman, Esquire
National Association of Government Employees
1819 Knoll Drive, # 17
Ventura, CA 93003

Re: *Loreena Lynn Collins v. Oxnard Federation of Teachers*
Unfair Practice Charge No. LA-CO-1417-E
WARNING LETTER

Dear Mr. Berman:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on January 29, 2010. Loreena Lynn Collins (Ms. Collins or Charging Party) alleges that the Oxnard Federation of Teachers (Union or Respondent) violated section 3543.6 of the Educational Employment Relations Act (EERA or Act)[1] by refusing to arbitrate a grievance on her behalf and making a threatening statement.[2] Investigation of the charge revealed the following relevant information.

Facts as Alleged by the Charging Party

Ms. Collins is employed by the Oxnard Union High School District (District) as a teacher at Oxnard Adult School. On June 15, 2009, the staff at Oxnard Adult School, including Ms. Collins, were notified by letter from the school's principal that due to budgetary shortfalls, adjustments in hours and class assignments would be made for the upcoming Fall semester. Employees were assured that any such adjustments would be made according to seniority. Ms. Collins' Fall teaching assignment ultimately resulted in a seven-hour reduction from her previous assignment, prompting her to contact Union representative Ko Tamura. After Mr. Tamura consulted with Union President James Rose and the Union's attorney, he informed Ms. Collins that the District did not appear to be following the contract, and that he would "get back" to her regarding resolution of the matter. Ms. Collins was advised by the Union to provide the District with a written acceptance of her assignment with reduced hours, which the District later claimed showed that Ms. Collins had voluntarily accepted the reduction in hours.

[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 charge also alleges violations of the Education Code, as well as sections of EERA related to the time that school employers and employee organizations must begin negotiations prior to adoption of a final budget, the duty to bargain with employers in good faith, and the duty to participate in impasse procedures in good faith.

The charge states that Ms. Collins later discovered that other less-senior adult education teachers had not had their hours reduced at all, and at least one less-senior teacher had been guaranteed more hours than Ms. Collins. Employees senior to Ms. Collins had their hours increased. The Union, at some point in time not specified in the charge, filed a grievance over this issue. It appears from information included in exhibits to the charge that a mediation between the District, the Union, and Ms. Collins was conducted as part of the grievance process. Sometime subsequent to the mediation, Ms. Collins requested that the Union pursue the matter to arbitration.

On December 18, 2009, the Union informed Ms. Collins by letter that the Union Executive Board had voted 8-0 not to arbitrate the matter. The letter explained the rationale of the Union's decision, stating in part:

> The Board felt that they had argued strongly with the District on behalf of each of the units to do whatever they could to avoid layoffs and keep everyone employed. If, in arbitration, we prevailed with the seniority argument, it would mean that the District would have to staff Adult Ed according to strict seniority. In this case, hours would be distributed from the most senior employee down which will create a potential, if not actual, layoff situation once those hours are exhausted and the more junior employees[,] guarantees could not be met. This, they felt, was contradictory to the spirit of what the [Union's] position is across all other units. Moreover, by attempting to make you whole, which was far from guaranteed by this approach, we'd likely be harming other unit members, including, perhaps, even you by forcing the District to layoff or reduce these hours below the guarantee.
>
> [W]hile the Board agreed that by only looking at the seniority list, it appears that you were unfairly treated, the Board accepted the argument that the Ed Code only guarantees a finite number of hours. In good economic times individuals receive a higher guarantee. During downturns, they don't....Moreover, there is an open legal issue about whether an adult instructor's "guarantee" is locked in when he or she becomes permanent after two years, and the impact of that guarantee. The high level of uncertainty over this issue made this matter a bad candidate for arbitration.

The letter went on to summarize the Union's attorney's analysis of the strengths and weaknesses of the case, noting that applicable court decisions have not accepted that contract language takes precedence over Education Code provisions in these types of disputes. The letter also stated that if the Union was to file an unfair practice charge with PERB on a unilateral change theory, it would encounter the same difficulties in prevailing in its arguments that it faced in the grievance. The letter concluded by assuring Ms. Collins that the Union

would contact the District and try to obtain the additional two hours that the District had offered in mediation, and also that it would request to negotiate with the District over new contract language to "give more clear directions for how an administrator is going to allocate hours."

The charge states that Union President Rose advised Ms. Collins that should she choose to pursue the matter on her own with the assistance of a private attorney, she could expect "repercussions" from the District. Ms. Collins interpreted this statement as a threat. Shortly after Mr. Rose's statement, the assistant principal of Oxnard Adult School approached Ms. Collins in her classroom and implied that he had received student complaints about her teaching techniques. Ms. Collins reports that in her previous eight years of employment with the District she had never received a student complaint. The charge also notes that Mr. Rose is a temporary employee of the Adult School and works directly with management.

For the reasons explained below, the charge fails to demonstrate a prima facie violation of EERA.

Discussion

1. PERB's Jurisdiction and Standing of the Charging Party

PERB is a quasi-judicial administrative agency charged with administering collective bargaining statutes covering public employers, public employees, and employee organizations representing public employees. EERA is one of the collective bargaining statutes under PERB's exclusive jurisdiction. PERB's jurisdiction does not extend, however, to other independent statutory schemes, such as the Education Code. (*San Francisco Unified School District* (2009) PERB Decision No. 2040; *Service Employees International Union, Local 535 (Mickle)* (1996) PERB Decision No. 1168.) Accordingly, PERB lacks jurisdiction over allegations of violations of the Education Code and these allegations must be dismissed from the charge.

The charge also alleges violations of EERA sections related to the rights and responsibilities of employee organizations in discharging their duty to bargain in good faith. Individual employees lack standing to allege that an exclusive representative violated its duty to meet and confer with an employer. (*Union of American Physicians & Dentists (Meenakshi, et al.)* (2006) PERB Decision No. 1846-S; *Oxnard School District (Gorcey and Tripp)* (1988) PERB Decision No. 667.) Individual employees also lack standing to allege violations of statutory sections that protect the collective bargaining rights of employee organizations. (*Regents of the University of California* (2010) PERB Decision No. 2153-H; *State of California (Department of Corrections)* (1993) PERB Decision No. 972-S.) Accordingly, these allegations must be dismissed from the charge.

2. The Duty of Fair Representation

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.)

The duty of fair representation does not contemplate the complete satisfaction of all represented. (*California School Employees Association & its Chapter 374 (Wyman)* (2007) PERB Decision No. 1903.) A union is afforded discretion concerning how far to pursue a grievance, and a determination of the strength of its merits will generally not be judged as the basis for a breach of the duty of fair representation, unless discriminatory or bad faith motivation is shown. (*California School Employees Association & its Chapter 410 (Payne)* (2009) PERB Decision No. 2029; *American Federation of Teachers College Guild, Local 1521 (Saxton)* (1995) PERB Decision No. 1109 [union negotiated a new classification for employee rather than pursue a grievance that was likely to fail.) However, if an employee presents a potentially meritorious grievance, the union must make an honest assessment before

abandoning it. (*Airline Pilots Assn. v. O'Neill* (1991) 499 U.S. 65, 74-75.) If the union does not explain its rationale, it may leave no choice but to deem the conduct arbitrary. (*General Truck Drivers* (1975) 217 NLRB 616, 618; see also *Oakland Education Association, CTA/NEA (Mingo)* (1984) PERB Decision No. 447.)

In this case, Ms. Collins was provided with a detailed letter explaining the reasons that the Union relied upon in declining to pursue the matter to arbitration. Because the Union supplied a specific rationale it cannot be found that the Union failed to make an honest assessment of the relative strength of the case before deciding not to arbitrate, or that it processed the grievance in an arbitrary or perfunctory manner. Charging Party argues that the Union here has "sided with the district in mis-applying [sic] sections of the Ed-code and statute to suit their own agenda, over the rights of senior employees." The fact that Ms. Collins disagrees with the Union's interpretation of relevant Education Code provisions, and also disagrees with the Union's preference to forego the matter to avoid a perceived potential for layoffs in the bargaining unit, does not demonstrate that the Union acted in a discriminatory or bad faith manner. A union is not obligated to adopt a bargaining position that could result in greater gains for a particular classification (*Union of American Physicians & Dentists (Meenakshi, et al.)*, *supra*, PERB Decision No. 1846-S), nor does it violate its duty of fair representation by taking a position that may have an unfavorable effect on some members. (*Orange Unified Education Association & California Teachers Association (Rossmann)* (2003) PERB Decision No. 1533; *Riverside County Office Teachers Association, CTA/NEA (McAlpine, et al.)* (2000) PERB Decision No. 1401.) Thus, the Union's decision not to pursue arbitration because it believed that decision to be best for the unit as a whole, even though such decision was not beneficial to Ms. Collins' individual interests, does not demonstrate a breach of the duty of fair representation.

3. Interference

Ms. Collins interpreted Mr. Rose's statements regarding potential "repercussions" by the District should she choose to pursue the grievance with a private attorney as a threat. This allegation is best described as the Union's statements interfering with Ms. Collins' protected rights under EERA. In determining whether a prima facie violation of EERA section 3543.6(b) has been stated, PERB will analyze the case according to the principles applicable for violations of 3543.5(a), the parallel provision prohibiting employer interference and reprisals. (*California Faculty Association (Hale, et al.)* (1988) PERB Decision No. 693-H, citing *Service Employees International Union, Local 99 (Kimmett)* (1979) PERB Decision No. 106.) The test for whether statements constitute interference or coercion depends upon whether, under the existing circumstances, they reasonably tend to interfere or coerce in the exercise of guaranteed rights, not whether the employee subjectively perceives the statements in that manner. (*Clovis Unified School District* (1984) PERB Decision No. 389; see also *Los Rios College Federation of Teachers, CFT/AFT Local 2279 (Deglow)* (1996) PERB Decision No. 1137 [the standard for analyzing interference is objective, rather than subjective].) Speech of union representatives is granted generous protection, so long as it is related to matters of legitimate concern (*Los Rios College Federation of Teachers (Lowman)* (1996) PERB Decision No. 1142), and is similar to the free-speech rights afforded employers. (*Ibid.*; *California Faculty Association (Hale, et al.)*,

supra, PERB Decision No. 693-H.) The expression of views or opinion does not evidence an unfair practice unless there is a threat of reprisal or promise of benefit. (*Rio Hondo Community College District* (1980) PERB Decision No. 128.)

Given the authorities discussed above, there is no basis to find Mr. Rose's comment coercive under these circumstances. As a threshold matter, a union is not responsible for the actions of the employer. (*Union of American Physicians & Dentists (Menaster)* (2007) PERB Decision No. 1918-S.) The charge implies that because Mr. Rose is employed at the Oxnard Adult School, working directly with the administrator who informed Ms. Collins about alleged student complaints, and the administrator's actions took place close in time to Mr. Rose's comments, the Union is somehow responsible for the District's actions. The mere fact that Mr. Rose is employed at the school is insufficient to support such an inference, however. Furthermore, since Mr. Rose did not make any suggestion that the Union would take any action against Ms. Collins for continuing her claim, and he has no direct authority over her employment relationship with the District, there is no basis to find that his comment would reasonably tend to discourage her from engaging in protected conduct by pursuing her claim. (*California Faculty Association (Hale, et al.)*, *supra*, PERB Decision No. 693-H [union representative's negative comments and opinions directed to unit members did not constitute interference because union representative did not threaten adverse action and had no control over the employment relationship].)

For these reasons the charge, as presently written, does not state a prima facie case.[3] 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 May 27, 2011,[4] PERB will dismiss your charge. If you have any questions, please call me at the above telephone number.

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[3] 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.*)

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

Sincerely,

Valerie Pike Racho
Regional Attorney

VR

cc: Loreena Lynn Collins