STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

GLADYS M. BRACEY, Charging Party, v. LOS ANGELES UNIFIED SCHOOL DISTRICT, Respondent.	Case No. LA-CE-2307 PERB Decision No. 674 June 8, 1988

Appearances; Gladys M. Bracey, on her own behalf; O'Melveny & Myers, by Framroze M. Virjee for the Los Angeles Unified School District.

Before Hesse, Chairperson, Craib and Shank, Members.

DECISION

SHANK, Member: Charging Party Gladys M. Bracey appeals the attached proposed decision of a Public Employment Relations Board (PERB or Board) administrative law judge (ALJ) dismissing her charge alleging that Respondent Los Angeles Unified School District (District) violated section 3543.5(a) of the Educational Employment Relations Act[1] when it placed her on

[1]The Educational Employment Relations Act (EERA or Act) is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Government Code section 3543.5(a) provides as follows:

> It shall be unlawful for a public school employer to:
>
> (a) 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.

unpaid, mandatory sick leave for a two-year period pursuant to Education Code section 44942. The charge was dismissed due to Charging Party's refusal to proceed.

We have reviewed the ALJ's proposed decision in light of the appeal and, finding it free from prejudicial error, adopt it as the decision of the Board itself.

In addition to PERB Regulation sections 32170(d) and (m)[2] relied on by the ALJ to support the instant dismissal, we find PERB Regulation sections 32170(c) and (f)[3] to be of equal import here. Subsection (c) vests the ALJ with the power

---

[2]PERB regulations are codified at California Administrative Code, Title 8, Part III, section 31001 et seq. Regulation section 32170 sets out the powers and duties of the Board agent conducting a hearing. Section 32170(d) and (m) states:

> (d) Regulate the course and conduct of the hearing, including the power to exclude a witness from the hearing room;
>
> . . . .
>
> (m) Carry out the duties of administrative law judge as provided or otherwise authorized by these regulations or by the applicable Act.

[3]Section 32170(c) and (f) states:

> (c) Issue subpoenas and rule upon petitions to revoke subpoenas;
>
> . . . .
>
> (f) Rule on objections, motions and questions of procedure;

and the duty to issue subpoenas and rule upon petitions to revoke subpoenas, while subsection (f) expressly grants the authority to rule on objections, motions and questions of procedure. It necessarily follows that, since PERB Regulation section 32170 commands the ALJ to exercise the powers and duties set out therein, the parties to an action cannot simply refuse to participate merely because they disagree with the ruling(s). Charging Party must, as stated in Los Angeles Unified School District (Siamis) (1984) PERB Decision No. 464, wait to determine if the ruling(s) will work to her prejudice and then file exceptions, for: "(d)isruption of the duly scheduled procedures and hearing by refusing to appear is not an appropriate self help measure." Siamis, supra, at p. 19.

ORDER

Based on the foregoing, the unfair practice complaint in Case NO. LA-CE-2307 is DISMISSED WITHOUT LEAVE TO AMEND.

Chairperson Hesse and Member Craib joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

GLADYS M. BRACEY, Charging Party,	)	Unfair Practice Case No. LA-CE-2307
v.	)	PROPOSED DECISION (4/15/87)
LOS ANGELES UNIFIED SCHOOL DISTRICT, Respondent.	)	

Appearances: Gladys M. Bracey, in propria persona; O'Melveny & Myers by Framroze M. Virjee, Attorney, for Los Angeles Unified School District.

Before Barbara E. Miller, Administrative Law Judge.

I. STATEMENT OF THE CASE

Gladys M. Bracey (hereinafter Bracey or Charging Party) filed an unfair practice charge against the Los Angeles Unified School District (hereinafter District or Respondent) on December 30, 1985. The Charge, which was amended on April 28, 1986, alleges the Charging Party was the victim of numerous retaliatory acts because of reports she made to the District's Assistant Superintendent of Special Education and to her exclusive representative, United Teachers of Los Angeles (hereinafter Union). It is specifically alleged that the District removed Bracey involuntarily from her position as a teleclass teacher at Widney High School in violation of the

This proposed decision has been appealed to the Board itself and may not be cited as precedent unless the decision and its rationale have been adopted by the Board.

Educational Employment Relations Act (hereinafter EERA).[1]

For the most part, this Proposed Decision does not address the merits of the charge filed by Gladys Bracey. The case is being dismissed because of Mrs. Bracey's refusal to proceed. What follows is an outline of the events which preceded this Proposed Decision and an outline of the positions of the parties. This background information is provided so that the dismissal can be placed in the appropriate context.

II. OUTLINE OF PROCEDURAL HISTORY

After the Charge was filed it was assigned to a Regional Attorney from the Office of the General Counsel of the Public Employment Relations Board (hereinafter Board or PERB) for purposes of an investigation. On May 1/ 1986, the Regional Attorney issued a Complaint simultaneously with a partial dismissal.[2] The Complaint alleges that the District placed Bracey on mandatory sick leave due to mental illness because of her protected activity.

An informal conference was conducted before an Administrative Law Judge of the PERB on June 4, 1986. When the parties were unable to resolve their dispute, it was assigned

---

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

[2]Bracey appealed the partial dismissal but the Board upheld the Regional Attorney in Los Angeles Unified School District (1986) PERB Decision No. 588.

to the undersigned for purposes of formal hearing. The formal hearing convened on September 10, 11, and 12, 1986. The hearing was scheduled to reconvene on November 17, 1986, at 10:00 a.m. continuing through November 20, 1986. Those dates were cancelled after the undersigned was informed, on the morning of November 17, of a medical emergency involving the Charging Party.

The hearing was scheduled to and did reconvene on January 20, 1987. On that date, the Charging Party refused to go forward if Jay Davis, the principal at Widney High School, remained in the hearing room. Thereafter, the Charging Party failed to show cause why Davis should be excluded or, in the alternative, she failed to indicate a willingness to go forward. On February 10, 1987, the record was closed and on February 23, 1987, after receipt of the final transcript, the case was submitted for proposed decision.

III. BACKGROUND

Due to the premature termination of the formal hearing, few factual findings regarding the merits of this case can be made. In order to fully appreciate the discussion following, however, an effort will be made to summarize the case as reflected by the record and by the positions of the parties as stated in their various pleadings and arguments.

Gladys Bracey worked for the Los Angeles Unified School District as a teacher for approximately 25 years. Ever since

she was injured on the job in 1969, Bracey has been primarily a teleclass teacher; she taught handicapped students over the telephone. Not long after her injury, Bracey claims the District disputed her need to be a teleclass teacher on a full-time basis. From the beginning, she claims, efforts were made to force her to teach in a conventional classroom.

In 1973, after suffering some additional injuries, Bracey was placed in a teleclass classroom on a full-time basis. That was basically her assignment until the events which gave rise to the filing of the unfair practice charge. As the teleclass program evolved, however, Bracey did have her complaints. In approximately 1978, Bracey claims the District started requiring teleclass teachers to substitute in conventional classrooms, primarily during the times when teleclass programs were not in session, but occasionally during the regular year as well. Moreover, Bracey complained that preference was given to the employment of substitutes for conventional classrooms rather than teleclass classrooms when a teleclass teacher and a classroom teacher were ill. Bracey claims the District's preference for classroom teachers and the cutbacks on working conditions for teleclass teachers were a function of the District's disregard for teleclass teachers who were frequently teachers who had filed worker's compensation claims against the District.

In recent years, the number of students eligible for teleteaching has declined dramatically. The District suggests that the decline is attributable to the increase in facilities accessible to the handicapped. Bracey suggests that the decline in enrollment is attributable to the District's inadequate programming. In any event, in January 1985, the District determined that in order to retain all the teleteachers then employed at Widney High School, it would be necessary to have each teacher provide instruction in a conventional classroom for one class period per day.

Bracey and District officials agree that Bracey refused to teach in a conventional classroom, claiming she was restricted because of her worker's compensation injury. Bracey claimed the District already had information from her doctor which precluded the District from assigning her to a conventional classroom. Jay Davis testified he had no objection to Bracey not teaching in a conventional classroom but she had to get a waiver pursuant to the District's reasonable accommodation procedures. Davis testified that he told Bracey she would be excused from teaching in a classroom while he gave her an opportunity to get the waiver. He even provided her with the forms and information necessary to obtain that waiver. For reasons never explained by Bracey, however, she refused to apply.

According to the District, in addition to failing to apply for the waiver, around this time, Bracey's behavior became quite unusual. She became suspicious, hostile, and verbally-aggressive. Her attendance became sporadic and at times she appeared to be in a trance. She refused to attend staff meetings, stating at one moment that it was because other teachers picked on her and then claiming that the Union told her not to be in a room with management representatives unless she had a Union representative present.

Bracey appears to agree with the District that problems surfaced after she refused to teach in a conventional classroom. Bracey claims she spoke to the Assistant Superintendent for Special Education, Dr. Philip Callison, who told her to speak with Dr. Jack Morrow and with the people at the office responsible for reasonable accommodation. Bracey indicated that after she visited Callison, Don Sacks, the teleclass coordinator, became extremely hostile and threatened her when he was subpoenaed to testify at a worker's compensation proceeding. In addition, Bracey complained that supplies began disappearing from her classroom and she was yelled at and belittled in staff meetings. When she told the Union she was being threatened, Bracey reported that representatives instructed her not to attend meetings with Sacks or Davis without a Union representative. When she could not get a Union representative to accompany her to staff

meetings, she refused to attend, believing she was acting on the advice of the Union.[3]

The parties agree Bracey was absent for one week early in April 1985. The District claims it received no notice while Bracey claims she made the necessary and appropriate telephone contact. In any event, when Bracey did return, she was directed to see the District's physician, Dr. Jack Morrow, who eventually recommended that Bracey be placed on leave pending a psychiatric evaluation. His recommendation was followed, Bracey complained to the Union, and the Union filed a grievance on Bracey's behalf complaining that the District was not in compliance with Education Code section 44942. After receiving the grievance, the District maintains it complied with Education Code section 44942, a matter disputed by Bracey, but not at issue in this proceedings. Los Angeles Unified School District (Bracey) (1986) PERB Decision No. 588.

Education Code section 44942 provides, in relevant part, as follows:

> 44942. Suspension or transfer of certificated employee on ground of mental illness:

---

[3]The record does not reflect the Union's version of the advice it gave Mrs. Bracey. It is not unlikely she was advised of her rights pursuant to Weingarten v. NLRB (1975) 420 U.S. 25 [88 LRRM 2689], Redwoods Community College District (1984) 159 Cal.App.3d 617 aff'g PERB Decision No. 293. Bracey, however, extended the doctrine set forth in those cases and thought she could refuse to attend general staff meetings without representation.

Psychiatric examination: Mandatory sick leave. (a) Any certificated employee may be suspended or transferred to other duties by the governing board if the board has reasonable cause to believe that the employee is suffering from mental illness of such a degree as to render him incompetent to perform his duties.

(b) The governing board shall forthwith, upon any suspension or transfer here under, give to the employee a written statement of the facts giving rise to the board's belief, and an opportunity to appear before the board within 10 days to explain or refute the charges.

(c) If, after the employee's appearance before the board, the board decides to continue the suspension or transfer, or if the employee chooses not to appear before the board, the employee shall then be offered, in writing, the opportunity of being examined by a panel of three psychiatrists selected by him from a list of psychiatrists to be provided by the board. To assist the panel in making their determination, the governing board shall supply to the panel, prior to the date scheduled for the psychiatric examination, a list of the duties of the position from which the employee was suspended or transferred. The employee shall continue to receive his regular salary and all other benefits of employment during the period dating from his suspension to the filing of the report of the panel with the governing board.

(d) The psychiatric examination shall be conducted at school district expense within 15 days of any suspension or transfer ordered here under. The employee shall submit to the examination, but shall be entitled to be represented by a psychiatrist or physician of his own choice, and any report of the psychiatrist or physician selected by him shall be filed with the panel at the request of the employee.

A written report of the panel on the examination of the suspended or transferred employee shall be submitted to the governing board within 10 days after completion of the examination. A copy shall be supplied to the employee upon request. The report shall contain a finding on whether the employee is suffering from mental illness of such a degree as to render him incompetent to perform his duties.

(e) If a majority of the panel conclude that the employee should be permitted to return to his duties, no written record of the determination of the panel shall be retained, and in all respects any written record concerning the employee shall appear as it did before the suspension was made.

(f) If a majority of the panel find in their report that the employee is suffering from mental illness of such a degree as to render him incompetent to perform his duties, the governing board may, upon receipt of the report, place the employee on mandatory sick leave of absence. Any mandatory sick leave of absence imposed under this section shall not exceed two years, during which period the employee shall be entitled to sick leave, hospital and medical benefits which he accrued during his employment by the governing board but only to the extent of such accrual.

(g) Any employee placed on mandatory sick leave of absence pursuant to this section may in writing immediately demand a hearing. Thereupon the governing board shall file a complaint in the superior court of the county in which the school district or the major part thereof is located, setting forth the charges against the employee and asking that the court inquire into the charges and determine whether or not the charges are true, and if true, whether they constitute sufficient grounds for placing the employee on mandatory sick leave of absence, and for a judgment pursuant to its findings.

The District alleges that Bracey received notice that the Board of Education was going to consider taking action pursuant to 44942 and Bracey failed to appear before the board. The District further maintains that on two separate occasions it convened a psychiatric panel and Bracey failed to appear before the panel. After Bracey's second failure to appear before the psychiatric panel, the Board of Education placed her on involuntary leave and the payment of her regular salary terminated.

Since that time, Bracey has exhausted all her accumulated sick leave. Correspondingly, Bracey exhausted her entitlement to District-paid hospital and medical benefits and other insurance benefits as well. Accordingly, if Bracey were to retire at this time, she would do so without many of the significant benefits she worked more than 25 years to maintain.

IV. THE FORMAL HEARING

The hearing in this case did not progress smoothly. From the outset Bracey appeared to be unfocused, disorganized and confused by every aspect of the proceeding. Before testimony or documents were introduced into evidence, the parties agreed that the undersigned could act as a mediator to further assist them in their attempts to resolve the dispute without a formal hearing. In assuming that role, the undersigned further confused Bracey, who seemed to have difficulty understanding how I could be mediator and confidant at one stage of the

proceedings and judge and jury at another. Nevertheless, on the first day of hearing, Bracey was assisted by her brother in organizing and presenting her material and the hearing did get underway. Documents were identified, opening statements made, and the first witness examined and cross-examined.

Each day Bracey repeatedly rejected increasingly favorable settlement offers, and the hearing progressed with the problems not uncommon when the examination of the witnesses is conducted by individuals unschooled in adversarial quasi-judicial administrative hearings. Bracey had difficulty formulating questions, focusing on matters relevant to her unfair practice proceeding and getting prepared. Her frustration level seemed to increase, she became hostile, and she seemed increasingly confused that PERB, the agency which had helped her get this far, was now ruling against her.

The first three days of hearing concluded and the hearing was scheduled to reconvene. On the date set, Bracey called on the telephone and indicated that she had to go to the hospital. In a subsequent telephone conversation, Bracey indicated that she had become ill because of the stress produced by the hearing. She explained that she was in constant pain and the idea of facing four days of hearing had caused insomnia and severe intestinal distress. Although Bracey never formally requested a continuance, the undersigned

continued the hearing making it clear that no further continuances would be allowed.

The hearing reconvened on January 20, 1987. The Respondent was present, as was a witness, Lawrence Birtja, the Assistant Principal at Widney High School. The first order of business related to Bracey's attempt to recall Don Sacks, Jim Wishard, a teleclass teacher, and Jay Davis, previously called and excused witnesses. The District indicated its opposition to those witnesses being recalled in Bracey's case-in-chief and Bracey failed to show good cause for such a maneuver. Accordingly, the subpoenas issued for those witnesses were quashed.

Bracey was then directed to proceed with her next witness and she refused to go forward if Jay Davis was allowed to remain in the hearing room. Bracey claimed her unnamed advisers had told her she had a right to demand the exclusion of witnesses. It was explained that Davis was a representative of the District who would be allowed to remain. Bracey was again advised that she should go forward. When she again refused, a recess was taken and Bracey was directed to return at 10:45 a.m., prepared to show cause why the case should not be dismissed if she refused to go forward.

At the appointed time, the Charging Party failed to return to the hearing room; she had left the PERB's offices and could not be located. Later the same day, on January 20, 1987, the PERB issued an Order to Show Cause directing the Charging Party as follows:

> [T]he Charging Party is hereby Ordered to show cause, in writing, on or before January 30, 1987, why the record should not be closed and the case dismissed if the Charging Party will not proceed with Mr. Jay Davis in the hearing room. At the same time, the Charging Party is hereby Ordered to state whether she will go forward if Mr. Jay Davis is not excluded from the hearing room.

On or about January 26, 1987, the Charging Party filed a letter with PERB complaining about deprivation of various constitutional and statutory rights. The Charging Party did not show cause why she should be allowed to proceed without Jay Davis in the hearing room and she declined to respond to the question regarding whether or not she would proceed with Davis in the hearing room. More precisely, Bracey refused to answer the question until the Respondent filed a particular pleading, demanded by Bracey but not required by PERB. Thereafter, on January 30, 1987, the Charging Party was advised that her letter of January 26 did not comply with the Order to Show Cause. She was given until February 5, 1987, to indicate whether or not she would go forward with the hearing. On February 4, 1987, the Respondent moved to dismiss the action for the Charging Party's refusal to go forward and her failure to comply with the Order to Show Cause.

On February 10, 1987, having heard nothing further from Bracey, the parties were advised that the record in this proceeding was closed and that the undersigned intended to

dismiss the action as a result of the Charging Party's failure to prosecute.

V. DISCUSSION

On several occasions, the PERB has been called upon to dismiss actions where the charging party refused to proceed. In Service Employees International Union, Local 99, AFL-CIO (Kimmett) (1981) PERB Decision No. 163, the Board upheld the dismissal of an Unfair Practice Charge where the charging party failed to appear. In that case, the charging party first failed to appear on a scheduled day of hearing because he insisted that the case set for hearing could not be heard until a charge he had subsequently filed was disposed of. Over objections from the respondent union, the Administrative Law Judge refused to dismiss the Complaint. Subsequently, the case was rescheduled for hearing and the Administrative Law Judge cautioned both parties that sanctions would be imposed if either failed to appear. When the charging party did fail to appear for the hearing, the union moved to dismiss the case and the motion was granted.

In Los Angeles Unified School District (Siamis) (1984) PERB Decision No. 464, the Board again upheld an ALJ dismissal when a charging party refused to proceed pursuant to the rules dictated by the ALJ. Siamis, like Gladys Bracey, wanted to follow his own rules, not those properly dictated by PERB.

In the instant case, the Charging Party has repeatedly refused to comply with the rules. It is recognized that she

has been representing herself, but, under the circumstances, she has been granted great leeway. Bracey was not ready to proceed on September 12 and was given time to prepare prior to calling her next witness. The case was adjourned early in order to give her additional time to prepare. She did not show up when the hearing was scheduled to reconvene and she never complied, even belatedly, with PERB's regulations relating to continuances.

Finally, when the hearing did reconvene, Bracey refused to proceed when she was directed to do so. She was then ordered to return after a recess and she disappeared. When she was given a written order to respond, she responded as she saw fit, failing to comply with the Order. When given another opportunity to respond, she failed to do so.[4]

In Los Angeles Unified School District (Siamis), supra, the Board recognized the inherent right of the Administrative Law Judge to control the proceedings before her. Such power is also vested by PERB's regulations. Section 32170 of part III, title 8, California Administrative Code provides, in relevant part:

> The Board agent conducting a hearing shall have the power and duty to:
>
> . . . .

---

[4]To the extent Bracey partially complied with the order, she failed to state sufficient cause for her refusal to go forward.

(d) Regulate the course and conduct of the hearing, including the power to exclude a witness from the hearing room;

. . . .

(m) Carry out the duties of administrative law judge as provided or otherwise authorized by these regulations or by the applicable Act.

Charging Party was visibly upset and frustrated by the proceedings. Nevertheless, given the rules as they currently exist, she elected to represent herself. The rules of PERB, not the rules of Gladys Bracey, must prevail if there is to be fairness to both sides in PERB proceedings. Given her refusal to proceed, which constitutes an abandonment of her cause of action, I exercise my discretion pursuant to PERB's Regulations and determine the Unfair Practice Charge/Complaint is DISMISSED.

PROPOSED ORDER

Based on the foregoing findings and conclusions, the case of Gladys M. Bracey v. Los Angeles Unified School District is hereby DISMISSED.

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself at the headquarters office in Sacramento within 20 days of service of this Decision. In accordance with PERB Regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. See California

Administrative Code, title 8, part III, section 32300. A document is considered "filed" when actually received before the close of business (5:00 p.m.) on the last day set for filing, ". . .or when sent by telegraph or certified or Express United States mail, postmarked not later than the last day set for filing . . ." See California Administrative Code, title 8, part III, section 32135. Code of Civil Procedure section 1013 shall apply. Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. See California Administrative Code, title 8, part III, sections 32300, 32305 and 32140.

Dated: April 15, 1987

Barbara E. Miller
Administrative Law Judge