



STATE OF CALIFORNIA
 DECISION OF THE
 PUBLIC EMPLOYMENT RELATIONS BOARD

JEANETTE G. GILLIGAN,)	
)	
Charging Party,)	Case No. SF-CO-378
)	
v.)	PERB Decision No. 899
)	
CALIFORNIA SCHOOL EMPLOYEES)	August 30, 1991
ASSOCIATION,)	
)	
Respondent.)	

Appearances: Jeanette G. Gilligan, on her own behalf; Marci B. Seville, Attorney, for California School Employees Association. Before Hesse, Chairperson, Shank and Carlyle, Members.

DECISION

SHANK, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Jeanette G. Gilligan (Gilligan) of the attached proposed decision by an administrative law judge (ALJ). The proposed decision dismissed the complaint which alleged that the California School Employees Association (Association) violated section 3543.6(b) of the Educational Employment Relations Act (EERA)¹ by threatening to refuse to

¹EERA is codified at Government Code section 3540 et seq. Section 3543.6(b) states, in pertinent part, that:

It shall be unlawful for an employee organization to:

(b) 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.

process Gilligan's grievances with the Monterey County Office of Education (MCOE).

The Board has reviewed the entire record, including the proposed decision,² Gilligan's exceptions and the Association's responses thereto, and finds the ALJ's findings of fact and conclusions of law to be free of prejudicial error and therefore adopts them as the decision of the Board itself. We address the exceptions and procedural matters below.

The Association argues that Gilligan failed to file exceptions to the proposed decision in a timely manner. The proposed decision was issued on May 20, 1991. In accord with PERB Regulation sections 32300 and 32130,³ any exceptions to the proposed decision in this case should have been filed by June 14, 1991. Pursuant to PERB Regulation section 32135, Gilligan filed her exceptions on June 12, 1991 using certified mail. Therefore, the Board finds the appeal was timely filed.

The Board also notes Gilligan's request for a stay of activity in connection with her request that the Board consolidate this case with her pending charge against MCOE. The Board has previously consolidated cases for decision on the basis of their identity of facts and similarity of issues. (Chaffey Joint Union High School District (1988) PERB Decision No. 669.) Here, Gilligan has failed to provide any information indicating

²At page 2 of the proposed decision, the dates of the formal hearing should read February 13, 1991 and April 12, 1991.

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

the charges are related by a similarity of facts or issues, or any other evidence in support of her consolidation request. The Board finds no grounds for consolidation of these cases, therefore a stay of the present case is unnecessary.

Gilligan also stated that she did not consent to the ALJ's issuance of an expedited decision. PERB Regulation section 32147⁴ permits an ALJ to expedite any matter pending before the Board. Regulation 32212⁵ authorizes a Board agent to rule on any request to file a written brief. While PERB regulations address the ALJ's authority to expedite a matter before the Board and rule on any request to make oral argument or file written briefs, the Board has adopted and implemented an expedited decision procedure for PERB ALJs. This procedure allows the parties to waive preparation of the written transcript of the formal hearing and requires the ALJ to issue a proposed decision within 30 days of the close of the case, if possible. Pursuant to PERB Regulation 32212, post-hearing briefs remain optional.

⁴32147. Expediting Matters Before the Board. The Board itself, the Chief Administrative Law Judge or the General Counsel may expedite any matter pending before the Board pursuant to policy established by the Board itself. For purposes of this section, expediting matters in the case of the Board itself means the matter shall be given priority and decided on an expedited basis.

⁵32212. Briefs and Oral Argument. Before the close of the hearing, the Board agent shall rule on any request to make oral argument or to file a written brief. The Board agent shall set the time required for the filing of briefs. Any party filing a brief shall file the original and one copy with the Board agent. Service and proof of service of the brief pursuant to section 32140 are required.

Generally, this procedure was to be implemented only upon the agreement of the parties.

In the present case, it appears that neither party expressly agreed to this procedure on the record. However, CSEA had requested the expedited decision procedure before the commencement of the formal hearing. Gilligan did not make any request for the expedited decision procedure. At the beginning of the formal hearing, the ALJ suggested that this case was appropriate for the expedited decision procedure. At the conclusion of the formal hearing, the ALJ decided to implement the expedited decision procedure. At the time, neither party objected to the ALJ's decision to issue an expedited decision. Gilligan did not object to its implementation until after the ALJ issued his proposed decision. The proposed decision found that Gilligan failed to prove her allegations that she was denied adequate representation by CSEA.

Although Gilligan did not expressly agree to the expedited decision procedure, the Board finds that the ALJ's issuance of an expedited decision was not prejudicial. The proposed decision relied upon a credibility determination between the two key witnesses. As the decision was based solely on the ALJ's credibility determination, a written transcript and post-hearing briefs would have added little, if any, weight to the ALJ's decision.⁶ Accordingly, the Board finds that the utilization of

⁶Even if the Board remanded the matter to the ALJ, the Board cannot require the ALJ to allow the parties to file written briefs. (See PERB Regulation 32212.) At most, the ALJ would

the expedited decision procedure in this case was not prejudicial to the parties.

ORDER

The complaint in Case No. SF-CO-378 is hereby DISMISSED.

Chairperson Hesse and Member Carlyle joined in this Decision.

review the written transcript and issue his proposed decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



JEANETTE G. GILLIGAN,)	
)	
Charging Party,)	Unfair Practice
)	Case No. SF-CO-378
v.)	
)	
CALIFORNIA SCHOOL EMPLOYEES)	PROPOSED DECISION
ASSOCIATION,)	(5/20/91)
)	
Respondent.)	

Appearances; Jeanette G. Gilligan, appearing in propria persona; Marci B. Seville, Attorney, for California School Employees Association.

Before James W. Tamm, Administrative Law Judge.

PROCEDURAL HISTORY

This charge was filed by Jeanette G. Gilligan (Gilligan or Charging Party) against the California School Employees Association (CSEA or Respondent) on March 6, 1990. The charge, as amended on April 16 and on July 16, 1990, cited numerous incidents where Gilligan was allegedly denied adequate representation by CSEA. On August 20, 1990, the Office of the General Counsel of the Public Employment Relations Board (PERB or Board) dismissed all but a single instance regarding an alleged threat made against Gilligan by the CSEA president on June 28, 1990. A complaint regarding that single incident was issued August 20, 1990.

The Charging Party appealed the partial dismissal. However, after having been granted one extension of time to file an appeal, Gilligan's appeal was held to be untimely by the appeals

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.

assistant on September 27, 1990. On October 9, 1990, Gilligan appealed that ruling to the Board, but was denied by the Board on December 7, 1990.

During the pendency of Gilligan's appeal on the partial dismissal, a settlement conference was held regarding the complaint. The parties were, however, unable to settle the dispute. After the settlement conference, Gilligan asked that a formal hearing be delayed until her appeal on the partial dismissal had been heard by the Board.

A formal hearing was held on April 8 and 13, 1991. At the conclusion of the hearing, the parties presented closing arguments and the case was submitted for an expedited decision.

FINDINGS OF FACT

At the time of the incident alleged in this complaint, the Charging Party was the morning switchboard operator at the Monterey County Office of Education (MCOE). Gilligan had filed several grievances against her employer and had been seeking CSEA's representation regarding the grievances. In one of those grievances Gilligan complained about preferential treatment given to the afternoon switchboard operator.

Gilligan asked for a meeting to review the grievances with the CSEA president, Carol Masterson. Masterson met with Gilligan for approximately two hours on June 28, 1990 to review Gilligan's paperwork.

During that meeting the subject of the afternoon switchboard operator came up. Gilligan and Masterson testified to contradictory versions of the conversation.

Gilligan's version is as follows. Gilligan testified that Masterson raised the subject of the afternoon switchboard operator. According to Gilligan, Masterson told Gilligan that the afternoon switchboard operator was the best friend that Gilligan had and that Masterson would not tolerate one union member making a complaint against another union member. Masterson went on to say that if there were further complaints about the afternoon switchboard operator, Masterson would have nothing more to do with Gilligan and would not take her grievances any further. According to Gilligan, Masterson raised this issue on her own without any prompting from Gilligan. Gilligan said she had no idea why Masterson even brought up the subject.

Masterson contradicted Gilligan's testimony. According to Masterson, Gilligan started telling Masterson about how upset she was with the afternoon switchboard operator. Masterson felt Gilligan was using the opportunity to vent her anger and Gilligan stated that the afternoon operator should be fired. Masterson told Gilligan that the afternoon operator was actually supportive of Gilligan and shouldn't be looked upon as an enemy. Gilligan then asked if Masterson would refuse to represent Gilligan and Masterson replied, "Of course not" but, that she could not support one classified employee trying to get another one fired.

This credibility dispute is resolved in favor of Masterson. The reasons in support of this finding are set forth below in the Discussion section.

At the conclusion of the June 28 meeting, Masterson indicated that she would pass on the grievance materials to CSEA field representative, Patty Larson. Masterson did, in fact, do that. Later Larson met with Gilligan over the grievance materials. A CSEA attorney also reviewed the materials and requested additional information about the grievances from Gilligan. Gilligan failed to ever respond to the attorney's request.

A short time later, Gilligan received a Notice of Termination from her employer, MCOE. Larson and CSEA senior field representative, Pat Roy, offered Gilligan extensive representation during her termination proceedings. At one time Larson and Roy met for over seven straight hours with the Charging Party reviewing the allegations against her in the Notice of Termination. CSEA would have represented Gilligan at the termination hearing itself, except for the fact that Gilligan misled CSEA into believing that she would be represented at the hearing by a private attorney.

ISSUE

Did Masterson violate the Educational Employment Relations Act (EERA)¹ by threatening to refuse to process Gilligan's grievances?

DISCUSSION AND CONCLUSION

Section 3543.6(b) of the EERA states that it shall be unlawful for an employee organization to:

(b) 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.

Under the test articulated by the Board in Carlsbad Unified School District (1979) PERB Decision No. 89, the Charging Party must establish that the Respondent's conduct tends to or does result in some harm to employee rights guaranteed under the EERA. (Service Employees International Union, AFL-CIO Local 99 (Kimmett) (1979) PERB Decision No. 106; American Federation of State, County and Municipal Employees (Waters) (1988) PERB Decision No. 697-H.)

In order to prevail on this complaint, the Charging Party must prove her allegations by a preponderance of the evidence. She has failed to do this. Although this complaint involved an allegation of a single threat made against Gilligan, the Charging Party's primary concern at the hearing was her dissatisfaction

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

with the representation she received by CSEA throughout her employment at MCOE.² The broader issues of CSEA's failure to represent Gilligan in her numerous grievances were all dismissed by the Office of the General Counsel of PERB.

This case is strictly limited to the alleged threat made by Masterson on June 28, 1990. Only two individuals attended the June 28 meeting and both testified giving different accounts of what happened. Masterson's version is credited for several reasons.

First, Masterson's testimony was clear and concise. In contrast, Gilligan's was rambling, disjointed, and often confused about times, sequences, and other specifics such as who was present and what was discussed at various meetings. Second, on occasions, Gilligan was clearly evasive or less than forthright. For example, Gilligan went to lengths to avoid admitting that she had not responded to the request of a CSEA attorney for information about her grievances. She also deliberately misled CSEA about whether she was represented in her termination proceedings by a private attorney. Third, CSEA exhibited on numerous occasions that it was willing to represent Gilligan on

²At the outset of the hearing, CSEA sought to limit testimony to the June 28 incident. The Charging Party was, however, allowed to offer documentary evidence and testimony about CSEA's representation of her throughout her employment at MCOE. This evidence was allowed because it could have demonstrated a pattern of discrimination by CSEA against Gilligan. After two days of testimony, the evidence concerning CSEA's representation of Gilligan had become cumulative, and showed that CSEA had not failed to represent Gilligan. Further evidence was then limited to the meeting of June 28, 1990.

both grievances and her termination proceedings after she had complained against the afternoon switchboard operator. CSEA's intent in this respect is consistent with Masterson's testimony and inconsistent with Gilligan's version.

For those reasons, Masterson's version that she assured Gilligan that CSEA would continue to represent her, is credited. I find that Masterson did not threaten Gilligan or in any way interfere with her exercise of protected rights at the June 28, 1990 meeting.

ORDER

For the reasons specified above and based upon the entire record, this complaint is hereby dismissed.

Pursuant to California Code of Regulations, title 8, 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 Cal. Code of Regs., tit. 8, sec. 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 Cal. Code of Regs., tit. 8, sec. 32135; Code Civ. Proc, sec. 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 Cal. Code of Regs., tit. 8, secs. 32300, 32305 and 32140.)

Dated: May 20, 1991

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James W. Tamm
Administrative Law Judge