

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



DEJUAN MARCUS PERRY,)
)
 Charging Party,) Case No. LA-CO-52-H
)
 v.) PERB Decision No. 1134-H
)
 AMERICAN FEDERATION OF STATE,) January 25, 1996
 COUNTY AND MUNICIPAL EMPLOYEES,)
)
 Respondent.)
 _____)

Appearance: Dejuan Marcus Perry, on his own behalf.
Before Caffrey, Chairman; Garcia and Johnson, Members.

DECISION AND ORDER

JOHNSON, Member: This case is before the Public Employment Relations Board (Board) on appeal by Dejuan Marcus Perry (Perry) to a Board agent's dismissal (attached) of the unfair practice charge and refusal to issue a complaint. Perry alleged that the American Federation of State, County and Municipal Employees (AFSCME) denied him the right to fair and impartial representation guaranteed by section 3578 of the Higher Education Employer-Employee Relations Act (HEERA), in violation of HEERA section 3571.1(e),¹ by declining to process a grievance on his

¹HEERA is codified at Government Code section 3560 et seq. HEERA section 3578 provides:

The employee organization recognized or certified as the exclusive representative shall represent all employees in the unit, fairly and impartially. A breach of this duty shall be deemed to have occurred if the employee organization's conduct in representation is arbitrary, discriminatory, or in bad faith.

behalf.

Perry filed an appeal of the dismissal, claiming that he does not understand why the Board agent dismissed his charge and repeated his allegation that AFSCME should have represented him by filing a grievance.

The Board has reviewed the entire record in this case, including the Board agent's warning and dismissal letters, the original and amended unfair practice charges, and Perry's appeal. Our review shows that the Board agent explained in detail why he was dismissing the charge. The Board finds the warning and dismissal letters to be free of prejudicial error and therefore adopts them as the decision of the Board itself.

The unfair practice charge in Case No. LA-CO-52-H is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Garcia joined in this Decision.

Section 3571.1 provides, in pertinent part:

It shall be unlawful for an employee organization to:

(e) Fail to represent fairly and impartially all the employees in the unit for which it is the exclusive representative.

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Blvd., Suite 650
Los Angeles, CA 90010-2334
(213)736-3127



August 24, 1995

Dejuan Marcus Perry

Re: DISMISSAL AND REFUSAL TO ISSUE COMPLAINT, Unfair Practice Charge No. LA-CO-52-H, Dejuan Marcus Perry v. American Federation of State, County and Municipal Employees

Dear Mr. Perry:

In the above-referenced charge, filed on June 22, 1995, you allege that the American Federation of State, County and Municipal Employees (AFSCME) denied you the right to fair and impartial representation guaranteed by Government Code section 3578 of the Higher Education Employer-Employee Relations Act (HEERA) and thereby violated HEERA section 3571.1 (e).

I indicated to you, in my attached letter dated August 3, 1995, that the above-referenced charge did not state a prima facie case. You were advised that, if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to August 14, 1995, the charge would be dismissed. I later extended the deadline to August 23, 1995.

On August 21, 1995, you filed an amended charge, alleging in full as follows:

As I've stated before, Robert Battles did not represent me at the time I was unfairly terminated from my position at UCLA Family Health. He stated that because of past writes up from my previous job at UCLA Communications, it would be impossible to win. All I was asking of him, was to simply try and make some type of bargain with UCLA Family Health. He failed to even try to look into my case. As far as those write ups were concern, they were written up many years ago prior to my termination. I feel that if AFSCME had represented my case at the time, we could have come down to some type of an agreement which would prevent [me] from being unemployed at this time. Again as stated

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August 24, 1995
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before on June 14, 1995, and under the unfair practice amendment, I'm filing a charge against (AFSCME union) on an exclusive representative's failure to represent an employee.

It is still not apparent from this amended charge, however, how AFSCME's failure to file a grievance on your behalf was arbitrary, discriminatory or in bad faith. As explained in my August 3 letter, an exclusive representative may exercise its discretion to determine how far to pursue a grievance and is not required to process a grievance if the chances for success are minimal. I am therefore dismissing the charge, based on the facts and reasons contained in this letter and in my August 3 letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, you 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 of Regs., tit. 8, sec. 32635(a).) To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. (Cal. Code of Regs., tit. 8, sec. 32135.) Code of Civil Procedure section 1013 shall apply. The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

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 of Regs., tit. 8, sec. 32635(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 of Regs., tit. 8, sec. 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail, postage paid and properly addressed.

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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 of Regs., tit. 8, sec. 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,

ROBERT THOMPSON
Deputy General Counsel

By
THOMAS J. ALLEN
Regional Attorney

Attachment

cc: Joseph R. Colton, Esq.

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Blvd., Suite 650
Los Angeles, CA 90010-2334
(213) 736-3127



August 3, 1995

Dejuan Marcus Perry

Re: WARNING LETTER, Unfair Practice Charge No. LA-CO-52-H,
Dejuan Marcus Perry v. American Federation of State, County
and Municipal Employees

Dear Mr. Perry: _____

In the above-referenced charge, filed on June 22, 1995, you allege that the American Federation of State, County and Municipal Employees (AFSCME) denied you the right to fair and impartial representation guaranteed by Government Code section 3578 of the Higher Education Employer-Employee Relations Act (HEERA) and thereby violated HEERA section 3571.1 (e).

My investigation of the charge reveals the following relevant facts.

You were employed by the University of California in a unit for which AFSCME is the exclusive representative. The charge describes your employment by the University, which ended when you were "let go" on an unspecified date. The charge then states as follows:

I'm filing a charge against AFSCME union for breached duty of fair representation; by failing to file grievances and missing the time limits.

The charge contains no further information about AFSCME's failure to file grievances. (In its response to the charge, AFSCME states that you called AFSCME after you received a notice of termination, that AFSCME investigated your case, and that AFSCME ultimately informed you that your case was extremely weak and could not be won.)

Based on the facts stated above, the charge does not state a prima facie violation of the HEERA, for the reasons that follow.

As Charging Party, you allege that AFSCME, as your exclusive representative, denied you the right to fair and impartial representation guaranteed by HEERA section 3578 and thereby

violated section 3571.1(e). 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 HEERA, a Charging Party must show that the exclusive representative'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.]

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.

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. (Emphasis added.)" [Reed District Teachers Association. CTA/NEA (Reyes) (1983) PERB Decision No. 332, p. 9, citing Rocklin Teachers Professional Association (Romero) (1980) PERB Decision No. 124.]

In the present case, it is not apparent from the charge how AFSCME's failure to file a grievance was arbitrary, discriminatory or in bad faith.

For these reasons the charge, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts which would correct the deficiencies explained above, please 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

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be signed under penalty of perjury by the charging party. The amended charge must be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before August 14, 1995, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3542.

Sincerely,

Regional Attorney
Thomas J. Allen

TJA:wc