



STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

JAN ZALEMINI,)	
)	
Charging Party,)	Case No. LA-CO-700
)	
v.)	PERB Decision No. 1170
)	
CALIFORNIA TEACHERS ASSOCIATION,)	September 23, 1996
)	
Respondent.)	
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Appearances: Jan Zalemini, on her own behalf; Rosalind D. Wolf, Attorney, for California Teachers Association.

Before Caffrey, Chairman; Garcia and Johnson, Members.

DECISION AND ORDER

GARCIA, Member: This case is before the Public Employment Relations Board (Board) on appeal by Jan Zalemini (Zalemini) to a Board agent's dismissal (attached) of her unfair practice charge. Zalemini filed an unfair practice charge alleging that the California Teachers Association (CTA) breached the duty of fair representation mandated by section 3544.9 of the Educational Employment Relations Act (EERA), thereby violating EERA section 3543.6(b),¹ apparently by handling her grievances improperly.

¹EERA is codified at Government Code section 3540 et seq. Section 3544.9 states:

The employee organization recognized or certified as the exclusive representative for the purpose of meeting and negotiating shall fairly represent each and every employee in the appropriate unit.

EERA section 3543.6 states, in pertinent part:

After investigation, the Board agent dismissed the charge for lack of jurisdiction, since the charge was untimely filed. The Board agent also noted that the charge failed to establish a prima facie case of a violation of EERA.

The Board has reviewed the entire record in this case, including the unfair practice charge, the warning and dismissal letters, Zalemini's appeal, and CTA's response. The Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself.

The unfair practice charge in Case No. LA-CO-700 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Johnson joined in this Decision.

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.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



July 1, 1996

Jan Zalimeni

Re: Unfair Practice Charge No. LA-CO-700, Jan Zalimeni v.
California Teachers Association
DISMISSAL AND REFUSAL TO ISSUE A COMPLAINT

Dear Ms. Zalimeni:

On April 24, 1996, you filed the above-referenced unfair practice charge alleging the California Teachers Association (CTA) violated the Educational Employment Relations Act (EERA or Act).

On June 12, 1996, I called you, and left a message asking you to contact me regarding this charge. You did not return that call. On June 13, 1996, I left a second message indicating that I was going to begin the process to dismiss your charge unless you contacted me by June 14, with further information regarding the charge. You did not return any of my calls, and I issued a warning letter on June 17, 1996.

I indicated to you, in my attached letter dated June 17, 1996, 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 June 27, 1996, the charge would be dismissed.

On June 24, 1996, I received a handwritten note from you indicating that you had not received any of the phone messages I had left for you. That note provided in its entirety,

That is not my phone. That is not my voice.
The person may or may here/there + I use a
P.O. Box not give me messages! Phone is not
answered --if person does answer it it isn't
until 9:30 p.m. Phone is locked up. She is a
dingbat older person. The SRS are kicking me
out due to my age! I may be on the streets
seriously. This will get dismissed vs. CTA -
over my dead body. (emphasis in original.)

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July 1, 1996
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My voice mail I had to get is (619) 687-8960. Go see "Trading Places" movie + you'll see how I have to deal with things! Then multiply that by 100! Then check you med. dict, on results of "abuse." I had to be abused as a result of what was done to me. (This is San Diego. I am not military or military wife.)

Your original charge, filed April 24, 1996, listed your telephone number as (619) 487-0342. That is the number I called on June 12, 1996, and June 13, 1996. After receiving the above-quoted note listing your new number as (619) 687-8960, I called you several times at that number. On June 24, 1996, I called you in the morning, leaving a message reminding you of the June 27, 1996, deadline for amending the charge, and providing you with my phone number if you had any questions. Later that day I called and left a second message with my phone number and indicated the charge would be dismissed unless you amended the charge.

On June 25, 1996, I left a third message reiterating my statement in the June 17, 1996 Warning Letter that any letters not served on the Respondent would not be considered, and that it would be necessary for you to file an amended charge before June 27, 1996.¹ You did not return any of my calls, nor have I received an amended charge or a request for withdrawal. Therefore, I am dismissing the charge based on the facts and reasons contained in my June 17, 1996 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:

¹In addition to the June 20, 1996 letter quoted above, I also received letters on June 24th, 25th, 27th, and July 1st. None of the letters provided facts demonstrating a prima facie violation of the EERA. It did not appear that any of the letters had been served on the Respondent.

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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.

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

Tammy L. Samsel
Regional Attorney

Attachment

PUBLIC EMPLOYMENT RELATIONS BOARD



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



June 17, 1996

Jan Zalimeni

Re: Unfair Practice Charge No. LA-CO-700,
Jan Zalimeni v. California Teachers Association
WARNING LETTER

Dear Ms. Zalimeni:

On April 24, 1996, you filed the above-referenced unfair practice charge alleging the California Teachers Association (CTA) violated the Educational Employment Relations Act (EERA or Act). On June 12, 1996 I called you, and left a message asking you to contact me regarding this charge. You did not return that call. On June 13, 1996, I left a second message indicating that I was going to begin the process to dismiss your charge unless you contacted me by June 14, with further information regarding the charge. To date you have not returned my calls.

Your charge, as initially filed¹, consists of four handwritten pages which provide, in part:

My contract rights . . . to constitutional rights were violated. I had no due process . . . no free speech . . . my property was damaged. I was and am as a non-person legally. A political prisoner. There is no time problem. And they were informed all along. I had no representation. No violation. Indentured . . . and effects of . . . no time problem re indenture, (ellipsis in original.)

You also contend, "grievance rep did zero for me," and that you were replaced with a first year teacher.

¹Since the filing of the initial charge, you have also sent several handwritten letters regarding this charge. It does not appear that these letters have been served on the Respondent, and will therefore not be considered as part of the charge.

It appears from the charge that you are contending CTA failed to help you because of your "incurable genetic condition." The charge indicates:

Besides, I have an incurable genetic condition . . . it was inherited . . . it was very high intelligence + skills . . . and raised to use brain for public interest in an honest elected family . . . also good faith + fair dealing for all. Those conditions should have been accommodated just as any other. In the system it was a disability + I couldn't do anything about it. (Maybe now I could.) (ellipsis in original)

EERA § 3541.5(a)(1) provides the Public Employment Relations Board shall not; "issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." It is your burden, as the charging party to demonstrate the charge has been timely filed. (See Tehachapi Unified School District (1993) PERB - Decision No. 1024.) It is unclear from the charge when any of the alleged unfair practices occurred because the charge fails to assert any references to dates whatsoever. Accordingly, your charge fails to state a prima facie violation within the jurisdiction of PERB.

Although not specifically asserted, you may be alleging the exclusive representative denied you the right to fair representation guaranteed by EERA section 3544.9 and thereby violated section 3543.6(b). PERB regulation 32615(a)(5) states a charge shall contain a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." A charging party should allege the "who, what, when, where, and how" of an unfair practice. (United Teachers-Los Angeles (Ragsdale) (1992) PERB Decision No. 944.) Mere legal conclusions are insufficient. (See State of California (Department of Food and Agriculture) (1994) PERB Decision No. 1071-S.) It is unclear from the charge what conduct by CTA allegedly violated the EERA. For example, although you state the "grievance rep did zero" for you, the charge does not indicate whether you ever filed a grievance, or any facts regarding any representation by CTA during a grievance. Accordingly, your charge fails to state a prima facie violation within the jurisdiction of PERB.

In order to state a prima facie violation of EERA § 3543.6(b), you must show that CTA's conduct was arbitrary, discriminatory or in bad faith. In order to state a prima facie case of arbitrary conduct violating the duty of fair representation, you:

". . . 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.]

Here the charge fails to present facts indicating what conduct by CTA is at issue. The charge alleges CTA "did zero" for you, but does not include any more specific information regarding the basis of that allegation. Nor does the charge present facts indicating CTA acted without a rational basis or devoid of honest judgment. For this reason your charge fails to state a prima facie violation within the jurisdiction of PERB.

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 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 June 27, 1996. I shall dismiss your charge. If you have any questions, please call me at (213) 736-7508.

Sincerely,

Tammy L. Samsel
Regional Attorney

cc: