

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CAROLINE A. DANIELS,)	
)	
Charging Party,)	Case No. LA-CO-748
)	
v.)	PERB Decision No. 1233
)	
ASSOCIATED ADMINISTRATORS OF)	November 20, 1997
LOS ANGELES,)	
)	
Respondent.)	
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Appearance: Frank Sanes, Jr., Attorney, for Caroline A. Daniels.
Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION

CAFFREY, Chairman: This case is before the Public Employment Relations Board (Board) on appeal by Caroline A. Daniels (Daniels) of a Board agent's dismissal (attached) of her unfair practice charge. In her charge, Daniels alleged that the Associated Administrators of Los Angeles breached the duty of fair representation guaranteed by section 3544.9 of the Educational Employment Relations Act (EERA), and thereby violated EERA section 3543.6(b).¹

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.

Section 3543.6 states, in pertinent part:

The Board has reviewed the entire record in this case, including Daniels' unfair practice charge, the Board agent's warning and dismissal letters, and Daniels' appeal thereto. 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-748 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Johnson and Dyer 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



San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 439-6940



September 22, 1997

Frank Sanes, Jr.
5777 W. Century Blvd., Suite 1060
Los Angeles, CA 90045

Re: **DISMISSAL OF CHARGE/REFUSAL TO ISSUE COMPLAINT**
Caroline A. Daniels v. Associated Administrators of Los Angeles
Unfair Practice Charge No. LA-CO-748

Dear Mr. Sanes:

The above-referenced unfair practice charge, filed August 26, 1997, alleges the Associated Administrators of Los Angeles (AALA) failed to fairly represent bargaining unit member Caroline A. Daniels. This conduct is alleged to violate Government Code section 3543.6 of the Educational Employment Relations Act (EERA or Act).

I indicated to you, in my attached letter dated September 10, 1997, 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 September 17, 1997, the charge would be dismissed.

I have not received either an amended charge or a request for withdrawal. Therefore, I am dismissing the charge based on the facts and reasons contained in my September 10, 1997, 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

Dismissal Letter
LA-CO-748
September 22, 1997
Page 2

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.

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.)

Dismissal Letter
LA-CO-748
September 22, 1997
Page 3

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



Kristin L. Rosi
Regional Attorney

Attachment

cc: Roger Johnson

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 439-6940



September 10, 1997

Frank Sanes, Jr.
5777 W. Century Blvd., Suite 1060
Los Angeles, CA 90045

Re: **WARNING LETTER**

~~Caroline A. Daniels v. Associated Administrators of Los Angeles~~

Unfair Practice Charge No. LA-CO-748

Dear Mr. Sanes:

The above-referenced unfair practice charge, filed August 26, 1997, alleges the Associated Administrators of Los Angeles (AALA) failed to fairly represent bargaining unit member Caroline A. Daniels. This conduct is alleged to violate Government Code section 3543.6 of the Educational Employment Relations Act (EERA or Act).

Investigation of the charge revealed the following. Ms. Daniels is employed by the Los Angeles Unified School District (District), and is exclusively represented by the AALA.

On June 24, 1997, Ms. Daniels received a notice from the District informing her of a June 26, 1997, meeting between herself and District officials. Upon receiving this notice, Ms. Daniels telephoned the AALA office in an attempt to speak with AALA Executive Assistant Roger Johnson who was familiar with Ms. Daniels problems with the District. Ms. Daniels was informed by Office Manager Lorraine Bush that Mr. Johnson was unavailable at the time. Ms. Bush reported the following information to District police officers. In a sworn declaration to the court, Ms. Bush stated that upon learning Mr. Johnson was unavailable Ms. Daniels stated in an angry voice, "I think they (the District) are trying to push me over the edge. If Lupe Reyes gives me an unsatisfactory (evaluation) you'll read about me in the paper on Friday, because I will kill her." Ms. Bush ended the conversation by promising Ms. Daniels that Mr. Johnson would return her call.

After ending the conversation with Ms. Daniels, Ms. Bush informed Mr. Johnson of Ms. Daniels alleged threat. Mr. Johnson telephoned District Superintendent James Figueroa to inform him of the threat, and District police officers were notified soon

Warning Letter
LA-CO-748
September 10, 1997
Page 2

after. After speaking with Mr. Figueroa, Mr. Johnson telephoned Ms. Daniels and promised to represent her at the June 26, 1997, meeting. During this time period, District police officers secured an arrest warrant for Ms. Daniels and Ms. Daniels was subsequently incarcerated for three days before posting bond.

Based on the above stated facts, the charge as presently written, fails to state a prima facie case for the reasons stated below.

Ms. Daniels asserts the AALA breached its duty of fair representation by: (1) concealing that Ms. Bush intended to call District police regarding the threat; (2) concealing that Ms. Bush had informed Mr. Johnson of the threat and that Mr. Johnson had cancelled the June 26, 1997, meeting; (3) assisting District police with their investigation; (4) allowing Ms. Bush to testify at Ms. Daniels preliminary hearing; (5) allowing the District to send Ms. Daniels the notice of unsatisfactory performance in the mail; (6) allowing the District to send a notice which forbids Daniels from discussing her personal problems with co-workers during work hours, and; (7) waiving the time limits for grievance filing until after Ms. Daniels preliminary hearing.

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). In order to state a prima facie violation of this section of EERA, Charging Party must show that the Association'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, 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.]

Ms. Daniels' allegations fail to demonstrate the AALA acted arbitrarily, discriminatorily or in bad faith. Acting on an apparent threat of violence, AALA officials informed the proper authorities and cooperated with police as statutorily mandated. The fact that AALA represent Ms. Daniels with regard to contractual issues does not relieve AALA of its responsibility to


Warning Letter
LA-CO-748
September 10, 1997
Page 3

report threats of violence on public employees, nor does it insulate Ms. Daniels if she makes such threats. Moreover, the fact that Mr. Johnson and Ms. Bush may have concealed their police report does not demonstrate arbitrary, discriminatory or bad faith behavior on AALA's part. Indeed, it is likely Mr. Johnson concealed his report to the District so as to not agitate Ms. Daniels further. Such action is not without a rational basis or devoid of honest judgment, and therefore fails to demonstrate a prima facie case.

Ms. Daniels allegations regarding AALA's waiver of contractual notice provisions and time limitations also fails to state a prima facie violation of the EERA. Facts presented fail to demonstrate AALA's waiver of these contractual provisions in this case were arbitrary, or in bad faith. As Ms. Reyes was unable and likely unwilling to meet with Ms. Daniels face to face, and as Ms. Daniels was temporarily incarcerated after the alleged threat, AALA's waiver of the meeting provision for unsatisfactory evaluations was neither devoid of honest judgment, nor harmful to Ms. Daniels. Moreover, AALA's waiver of grievance time lines while Ms. Daniels fought felony charges seems to preserve Ms. Daniels contractual rights and thus is hardly a breach of AALA's duty owed to Ms. Daniels. As such, the charge fails to state a prima facie violation of the duty of fair representation.

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 September 17, 1997, I shall dismiss your charge. If you have any questions, please call me at (415) 439-6940.

Sincerely,


Kristin L. Rosi
Regional Attorney