STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

PAULA SELIGA,	)	
	)	
Charging Party,	)	Case No. LA-CO-768
	)	
v.	)	PERB Decision No. 1289
	)	
UNITED TEACHERS OF LOS ANGELES,	)	October 8, 1998
	)	
Respondent.	)	
	)	

Appearances: Paula Seliga, on her own behalf; Geffner & Bush by Nathan Kowalski, Attorney, for United Teachers of Los Angeles.

Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (Board) on appeal of a Board agent's dismissal (attached) of Paula Seliga's (Seliga) unfair practice charge. Seliga's charge alleged that the United Teachers of Los Angeles (UTLA) breached the duty of fair representation mandated by section 3544.9 of the Educational Employment Relations Act (EERA) and thereby violated EERA section 3543.6(b)[1] when it failed to

[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3544.9 provides:

> 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 provides, in relevant part:

> It shall be unlawful for an employee organization to:

adequately represent her with regard to: (1) a retaliatory transfer; (2) a retaliatory evaluation; (3) numerous grievances; (4) a Chapter Chair election; and (5) a general lack of representation for the past seven years.

The Board has reviewed the entire record in this case, including the unfair practice charge, the warning and dismissal letters, Seliga's appeal[2] and UTLA's response thereto. The Board finds the warning and dismissal letters to be free from prejudicial error and adopts them as the decision of the Board itself.

> (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.

[2]On appeal, Seliga requests that, if the Board affirms the Board agent's dismissal, it issue a writ of extraordinary relief from its decision. Seliga's request appears to be a reference to EERA section 3542(b), which provides:

> (b) Any charging party, respondent, or intervenor aggrieved by a final decision or order of the board in an unfair practice case, except a decision of the board not to issue a complaint in such a case, may petition for a writ of extraordinary relief from such decision or order.

By its terms, Section 3542(b) does not apply to a Board decision not to issue a complaint. Further, a writ of extraordinary relief is a type of equitable relief issued by a court in response to a decision by the Board. The Board has no authority to issue such a writ.

ORDER

The unfair practice charge in Case No. LA-CO-768 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Johnson joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

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

August 14, 199 8

Paula J. Seliga

Re: Paula Seliga v. United Teachers of Los Angeles
Unfair Practice Charge No. LA-CO-768, Second Amended Charge
DISMISSAL AND REFUSAL TO ISSUE A COMPLAINT

Dear Ms. Seliga:

In the above-referenced charge Paula Seliga alleges the United Teachers of Los Angeles (UTLA) violated the Educational Employment Relations Act (EERA or Act) § 3543.6(b) by violating its duty of fair representation. Seliga filed the original charge on June 23, 1998. On or about June 24, 1998, I asked Seliga several questions regarding her charges. On or about July 17, 1998, I spoke with Seliga and answered several procedural questions. On July 29, 1998, I issued a warning letter. On August 3, 199 8, Seliga filed a first amended charge. On August 5, 1998, Seliga filed a second amended charge.[1]

The first and second amended charges allege UTLA failed to represent Seliga with regard to: (1) her transfer; (2) her performance evaluation; (3) her grievances during the 1997-1998 school year; and (4) the UTLA Chapter Chair's lack of representation while Seliga was at the Bertrand School.

The warning letter indicated the original charge did not establish: (1) the allegations were timely; (2) the who, what, when, where and how of an unfair practice; and (3) that UTLA had acted in an arbitrary, discriminatory or bad faith manner.

1. Transfer

The warning letter indicated the original charge failed to provide the pertinent facts regarding this allegation, and failed

[1]The second amended charge did not vary significantly from the first amended charge in content, but instead simply reworded several of the paragraphs in the first amended charge.

to demonstrate UTLA acted in an arbitrary, discriminatory or bad faith manner.[2] The warning letter stated, in pertinent part:

> The Charging Party explained that she [Seliga] contacted Dori Miles of UTLA when she received notice of her transfer. Miles indicated that grievances regarding involuntary transfers were difficult to win absent monetary loss to the grievant. Seliga indicated she was going to file a grievance on her own. These facts do not indicate UTLA acted arbitrarily. It appears Miles assessed the facts provided by Seliga, and told Seliga what she thought was the likely outcome of the grievance. In response, Seliga indicated she would file on her own behalf. That statement suggests Seliga did not ask for further help from UTLA. Nor does the charge provide facts indicating Seliga asked for further help from UTLA. Thus, UTLA's conduct regarding Seliga's transfer does not violate the EERA.

The first and second amended charges do not refute the above-stated facts. However, the first and second amended charges allege the transfer was supported by UTLA. The second amended charge alleges:

> UTLA is supposed to support bargaining unit members, (me) in conditions of employment, of which a transfer is included and procedures to be used for evaluation of employees. I was transferred for being disharmonious, which sprang from the exercise of protected rights guaranteed by our Constitution. Disharmony is not equal to disruption. I did not cause disruption. I advocated for students' rights under the Chandra Smith Consent Decree. UTLA knowingly allowed LAUSD to use methods such as saddling me with an inordinate amount of students with behavioral, emotional and academic problems. This is also a condition of employment - teaching students with undiagnosed learning problems, and allowing them to be illegally denied these services.

---

[2]The original charge indicates Seliga received notice of her transfer on June 3, 1998, thus, an allegation regarding UTLA's conduct in response to that notice would appear to be timely filed.

The above-stated information does not factually demonstrate Miles or any other UTLA representative acted in an arbitrary, discriminatory, or bad faith manner with regard to Seliga's transfer. Nor does the allegation provide any facts from which it can be determined that UTLA participated in the transfer. As the first and second amended charges did not correct the deficiencies noted in the warning letter, this allegation must be dismissed.

2. Performance Evaluation

The warning letter indicated the original charge failed to demonstrate the allegation was timely, to provide pertinent facts, and to establish UTLA acted in arbitrary, discriminatory or bad faith manner.

The first and second amended charges indicate Seliga received negative performance evaluations in March and June of 1998. The charges do not indicate whether Seliga contacted UTLA, or any particular UTLA representative regarding these evaluations. The second amended charge indicates, in pertinent part:

> Even though the collective bargaining agreement states Article X, Evaluation and Discipline Section 4.2 and 4.3 that if the employee and employer are unable to reach agreement . . . and if the employee is dissatisfied with the evaluator's determination, the employee may appeal the matter to the next higher administrative level for resolution." and 4.3 "If the employee is dissatisfied with the evaluator's determination, the employee may appeal the matter to the next higher administrative level." These rights were denied me by UTLA, with various lack of responses from D. Higuchi, T. Skotnes, and D. Miles. D. Miles' only response was to verbally state "she's never heard of this clause being used before." [sic]

The second amended charge also states:

> When I went before the grievance committee in May 98, I went to pursue Article X, Section 4.2 and 4.3 which stated that the employee may appeal the matter to the next higher administrative level, not merely protest the evaluation. This right was denied to me by the district with full support of UTLA, yet

> the right is clearly stated in the contract in the aforementioned sections.

The first and second amended charges do not explain how UTLA denied Seliga these rights, nor do the facts provided explain how UTLA supported the District in denying these rights. UTLA informed Seliga that it would not pursue the grievance to arbitration because UTLA's Grievance Committee determined that the District had not violated any contract provision. Therefore, the original and the amended charges fail to demonstrate UTLA acted in arbitrary, discriminatory, or bad faith manner.

3. Grievances

The warning letter indicated the original charge failed to demonstrate the allegation was timely, to provide pertinent facts, and to establish UTLA acted in an arbitrary, discriminatory or bad faith manner.

The first and second amended charges indicate Seliga filed grievances, during the "97-98 school year," without providing specific dates. As previously stated, unfair practices occurring before December 23, 1997, are time-barred by PERB's six month statute of limitations. The first and second amended charges do not establish that this allegation is timely filed, and therefore it must be dismissed.

Even if considered timely filed, the charge does not demonstrate UTLA acted in an arbitrary discriminatory or bad faith manner. With regard to this allegation, the second amended charge indicates:

> D. Miles refused to pursue my grievance on notification of absence, even though grievance had merit that would have affected many other teachers. A grievance victory would not have damaged the terms and conditions of employment for the bargaining unit as a whole. In fact, it would have clarified some ambiguous language that was susceptible on it face to more than one interpretation (patent ambiguity) The contract provision specifically states that the office must know of the teacher's absence not later than "30 minutes before the schedule begins on the day of the absence." It is not clear whose schedule is referred to here, the substitutes's or the teacher's. In cases where the teacher leaves for part of the day, and has already called the sub. desk

> to order a substitute for his/her absence, there is no need for the office to know first thing in the morning if the teacher is not leaving till say 1:00 pm. This interferes with teachers' rights, and opens the door for workplace abuse, in as much as administration can then lobby for unavailability of half-day substitutes. I did not have "second thoughts" about the remedy, but was told by D. Miles that if I did not accept provisions of the grievance about substitute notification, she would not advocate for me at Grievance Review. (I did not know at the time that I could present my own case to the committee.) I was coerced into accepting the remedy which was really no remedy at all as I specifically asked for declaratory relief in resolution of this ambiguously worded contract provision, [sic]

The above-stated information does not demonstrate a prima facie violation of the duty of fair representation. The facts indicate UTLA represented Seliga and settled the absence-policy grievance. Seliga, however, alleges this conduct violates the EERA because she did not get the remedy she initially requested. Although Seliga does not agree with the settlement, the duty of fair representation does not require UTLA to obtain the remedy sought by Seliga. The duty of fair representation allows UTLA to:

> exercise its discretion in determining how far to pursue a grievance as long as it does not arbitrarily ignore a meritorious grievance or process a grievance in a perfunctory fashion. (United Teachers of Los Angeles (Collins) (1982) PERB Decision No. 258.)

Here, the facts do not indicate UTLA ignored Seliga's grievance, nor do they indicate UTLA processed the grievance in a perfunctory fashion. Thus, this allegation is dismissed.

4. The Chapter Chair

The original charge alleged that UTLA violated the EERA by failing to set aside the Chapter Chair election. The warning letter indicated the original charge failed to demonstrate the allegation was timely, to provide pertinent facts, and to establish UTLA acted in an arbitrary, discriminatory or bad faith manner. The warning letter also indicated the election was an internal union affair, and that the original charge did not

provide facts indicating UTLA's refusal to set aside the Chapter Chair election had an impact on Seliga's relationship with her employer. The warning letter also noted that Seliga voluntarily withdrew her candidacy for the Chapter Chair position.

With regard to the election, the second amended charge alleges:

> Furthermore, I belong to a protected class, I have a known disability and am a known union activist. I had no fair representation for grievance handling. The decision not to pursue the chapter chair election in May of 98 was not voluntarily withdrawn. Rather my candidacy was forced to be withdrawn because I feared physical harm based on the torn speeches placed in my mailbox with derogatory statements, threats, and foul language. I have evidence that I had previously been attacked by a teacher favored by the principal, and then blamed for causing her to attack me. She is a close personal friend of my local school Union representative, my chapter chair, Don Hori.
>
> In Kimmett v. SSEU it is stated that a charge involving internal union affairs is not a DFR claim and is outside PERB jurisdiction unless the activity has substantial impact on employees' relationship with employer.) When my chapter chair Don Hori and D. Miles did not support my rights, this did impact on my relationship with my principal. Since I had no support, he felt free to intimidate me further and further deny my rights. However, these transgressions by UTLA are not internal union affairs, but result from a lack of enforcing many CBA provisions, [sic]

The above-stated information does not correct the deficiencies noted in the warning letter. The Chapter Chair election is an internal union affair over which PERB does not have jurisdiction absent facts demonstrating a substantial impact on Seliga's relationship with her employer or that UTLA retaliated against Seliga for protected activities. Seliga's allegation that the principal felt free to intimidate her as a result of UTLA's decision not to set aside the election does not demonstrate a substantial impact on Seliga's relationship with her employer. Nor does the charge include facts demonstrating UTLA retaliated against Seliga for protected activities. Thus, this allegation should be dismissed.

The warning letter also noted that Seliga withdrew from the election. The first and second amended charges allege Seliga withdrew because she received written threats, and that therefore she did not voluntarily withdraw her candidacy. However, neither the original nor the amended charges include those written threats. The charges fail to identify who wrote the alleged threats, and therefore that conduct cannot be attributed to UTLA.

In addition to the allegation regarding the Chapter Election, the original charge also alleged the Chapter Chair denied her a duty of fair representation. The warning letter indicated the original charge failed to demonstrate the allegation was timely, to provide pertinent facts, and to establish UTLA acted in an arbitrary, discriminatory or bad faith manner. The first and second amended charges allege the UTLA Chapter Chair, Don Hori, denied Seliga representation during her seven years at Bertrand. The first and second amended charges allege Hori failed to represent Seliga by failing to help Seliga enforce her seniority rights. This information does not state a prima facie violation within the jurisdiction of PERB for the reasons that follow.

As previously stated, PERB has a six-month statute of limitations period. In the original charge, Seliga provided:

> I have not been able to use my seniority rights for four years, due to unsubstantiated, defamatory statements made about me, by other bargaining unit members.

In the first and second amended charges Seliga alleges Hori has failed to represent her for the past seven years. Thus, it appears that Seliga knew of the alleged unfair practice more than six months before the filing of this charge. Therefore, this general allegation must be dismissed as outside the jurisdiction of PERB. Seliga specifically alleges the Hori failed to support her seniority rights. The original charge includes a May 7, 1997, letter from UTLA to Seliga regarding Hori's failure to support her seniority rights. Thus, it appears Seliga had knowledge of this alleged unfair practice more than six months prior to the filing of this charge on June 23, 1998. Therefore, this allegation should be dismissed.

Even if timely filed the charges do not present facts indicating Hori or UTLA acted in an arbitrary, discriminatory, or bad faith manner. UTLA addressed Seliga's concern in a May 7, 1997, letter which indicated the Chapter Chair was not required to vote a certain way over the selection of classes. The charges do not include any memorandum from UTLA describing Seliga in a negative light. Thus, this allegation must be dismissed.

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 Regs., tit. 8, sec. 32635(a).) Any document filed with the Board must contain the case name and number. 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 Regs., tit. 8, sec. 32135.) Code of Civil Procedure section 1013 shall apply. The Board's address is:

Attention: Appeals Assistant
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 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 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 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 Director

Attachment

cc: Nathan Kowalski

PUBLIC EMPLOYMENT RELATIONS BOARD

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

July 29, 1998

Paula J. Seliga

Re: Paula Seliga v. United Teachers of Los Angeles
Unfair Practice Charge No. LA-CO-768
WARNING LETTER

Dear Ms. Seliga:

In the above-referenced charge Paula Seliga alleges the United Teachers of Los Angeles (UTLA) violated the Educational Employment Relations Act (EERA or Act) § 3543.6(b) by violating her duty of fair representation. Seliga is a teacher within the Los Angeles Unified School District (LAUSD or District). The charge states in its entirety:

> PERB's test for determining if a subject is within the scope of representation is the "Anaheim Test." Under EERA 3543.2 Terms and Conditions of Employment. UTLA has failed to represent me fairly in 1) Retaliatory transfer. 2.) Retaliatory evaluation of employee, (me) 3.) In numerous grievances there has been no "good faith" bargaining. 4.) My School Chapter Chair is encouraged to do as he feels is best, rather than support my right to fair representation. After numerous written and oral communications asking for support because I had complained to the Calif. Dept. of Education and LAUSD's Division of Compliance Review. I am being moved to another school, schedule, and grade level against my wishes. I should have been offered protection, according to the enclosed memos from D. Higuichi and Dr. Jones, but my pleas for justice for myself and my students have gone unheeded in spite of legal mandates to do so.
>
> Clovis USD (1984) No. 389 62 CPER 56 (Representation election set aside because unfair practice interfered with right to freely choose representative; unfair conduct included "Captive Audience" speech to employees about election, etc. This same situation happened to me when UTLA Elections

for chapter chair were held during the first 15 minutes of a staff meeting. (immediately after my campaign literature had been torn to shreds with obscenities written on them and placed in my mailbox.) My morale was so low, that I considered it futile to make a speech under such conditions and I felt forced to withdraw my candidacy.

Under EERA 3543.2 conditions of employment include transfer, reassignment, and procedures to be used for evaluation of employees. When I brought grievances to arbitration, regarding my Stull Evaluation the UTLA Grievance Review Committee told me these grievances weren't eligible for arbitration because I had not yet received and unfavorable evaluation. Yet in the CBA Article X, Evaluation and Discipline 4.2, 4.3, under the state statute regarding reprisal, and according to the equity clause of the CBA. Other teachers were allowed to make appointments at their convenience for their performance review, while I was forced to be evaluated during yearly testing other inauspicious, not mutually agreed upon times. In May of 1998 I was entitled to present my case to the arbitration committee, but denied access for the stated reason.

I have not been able to use my seniority rights for 4 years due to the unsubstantiated, defamatory statements made about me, by other bargaining unit members (See latest covertly circulated memo about me, propagating unfounded rumors without bringing the matter to my attention.) My chapter chair, Don Hori has not supported by seniority rights and additionally has been at the forefront in signing these defamatory remarks about me, and has not alerted me to the damage to my reputation, so I have had no "fair representation." When I appealed to the UTLA Constitution Committee, they stated that he did not have to support my seniority rights as stated in the CBA. (See enclosed.)

At the last of my many grievances, during the '97-98 school year, I was forced to accept a remedy that was not included in the grievance

> when I wrote it up. I clearly stated on the grievance form that I wanted declaratory-relief. At Step 1 the principal came up with a different plan. While in my naivete I assumed this was just one step on the way to declaratory relief, my UTLA Representative later told me she considered the matter settled and would not advocate for me continuing this grievance even though it was so stated on the grievance form that I wanted "Declaratory Relief." See enclosed.

The charge also includes the following attachments: (1) May 7, 1997 letter from Lila Dawson-Weber, UTLA Constitution Committee Chairperson, to Seliga, indicating the Committee had unanimously ruled against Seliga's request that it overturn the election of the Chapter Chair; (2) a December 23, 1997 letter from Seliga to Mr. Butler and Mr. Skotnes listing complaints against the principal at the Bertarnd School; (3) a June 5, 1998 letter from Margaret Jones to Seliga closing Seliga's complaint to the administration that she was being retaliated against; (4) an unsigned and undated petition which would require UTLA to mandate their Chapter Chairs to support votes on seniority rights; (5) a June 9, 1997 letter from Day Higuchi, UTLA President, to Sheila Hopper which indicates UTLA adopted a policy on whistleblower protection; and (6) a June 30, 1997 letter from Henry Jones, LAUSD Chief Financial Officer to Douglas Hopper indicating that the State Auditor's office would investigate allegations made by Mr. Hopper against LAUSD.

Seliga also hand-delivered approximately 50 pages of documents to the Los Angeles Regional Office. These documents were not served on the Respondent.

On June 23, 1998, Seliga filed a unfair practice charge alleging the District retaliated against her by transferring her to the Hazeltine Elementary School. On or about June 24, 1998, I asked Seliga several questions regarding her charges. During this conversation, Seliga indicated that she had contacted Dori Miles of UTLA when she had received notice of her transfer. Seliga alleges Miles told her that grievances based on transfers usually lose unless the employees can-prove loss of money. Seliga told Miles that she would be filing a grievance herself. Miles did not respond to Seliga's statement.

On or about July 17, 1998, I spoke with Seliga and answered several procedural questions for Seliga.

The above-stated information fails to state a prima facie violation of the EERA within the jurisdiction of PERB for the reasons that follow.

Seliga alleges UTLA failed to represent her with regard to: (1) a retaliatory transfer; (2) a retaliatory evaluation; (3) in numerous grievances; (4) a Chapter Chair election; and (5) in failing to provide declaratory relief in her last grievance.

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.)

Seliga filed this charge on June 23, 1998. The charge does not include facts indicating when the District issued Seliga a negative evaluation, when Seliga filed any grievances, when the Chapter Chair election took place or when UTLA forced Seliga to accept less than declaratory relief. Thus, these four allegations are considered untimely filed and must be dismissed. Even if considered timely filed, these allegations do not state a prima facie violation for reasons that will be discussed further below.

The charge indicates Seliga received notice of her transfer on June 3, 1998, thus, an allegation regarding UTLA's conduct in response to that notice would appear to be timely filed. However, that allegation does not state a prima facie violation for reasons that will be discussed further below.

Even if considered timely filed, all five of the charge's allegations suffer from further inadequacies. A charging party should allege the "who, what, when, where, and how" of an unfair practice. (United Teachers-Los Angeles (Ragsdale) (1992) PERB Decision 944.) Mere legal conclusions are insufficient. (See State of California (Department of Food and Agriculture (1994) PERB Decision No. 1071-S.)

The written statement of charge does not present the "who, what, when, where, and how of an unfair practice." Nor do the documents attached to the charge, and summarized above, provide this information. Seliga alleges UTLA failed to represent her with regard to: (1) a retaliatory transfer; (2) a retaliatory evaluation; (3) in numerous grievances; (4) in a Chapter Chair election; and (5) in failing to provide declaratory relief in her last grievance. However, the charge does not provide facts supporting these allegations. Thus, the charge should be

dismissed for failure to provide the who, what, when, where and how of an unfair practice.

Even if not dismissed for the above-stated reasons, the charge fails to state a prima facie violation of the EERA for the following additional reasons. 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). 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 EERA, Charging Party must show that the Association'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.]

The charge does not provide facts indicating UTLA acted in an arbitrary, discriminatory or bad faith manner. The Charging Party explained that she contacted Dori Miles of UTLA when she

received notice of her transfer. Miles indicated that grievances regarding involuntary transfers were difficult to win absent monetary loss to the grievant. Seliga indicated she was going to file a grievance on her own. These facts do not indicate UTLA acted arbitrarily. It appears Miles assessed the facts provided by Seliga, and told Seliga what she thought was the likely outcome of the grievance. In response, Seliga indicated she would file on her own behalf. That statement suggests Seliga did not ask for further help from UTLA. Nor does the charge provide facts indicating Seliga asked for further help from UTLA. Thus, UTLA's conduct regarding Seliga's transfer does not violate the EERA. Nor does the charge provide facts indicating UTLA violated the EERA with regard to Seliga's performance evaluation or other grievances. Thus, these allegations should be dismissed.

The charge also suggests UTLA denied Seliga's duty of fair representation by failing to set aside a Chapter Chair election. PERB decided matters concerning internal union affairs are generally immune from review, unless they have a substantial impact on the relationships of unit members to their employers so as to give rise to a duty of fair representation, or involve retaliations for protected activity. (San Francisco Community College District Federation of Teachers (1995) PERB Decision No. 1084.) The charge does not provide any facts indicating the election had an impact on Seliga's relationship with her employer as to give rise to the duty of fair representation and should therefore be dismissed. Moreover, the charge itself, indicates Seliga voluntarily withdrew her candidacy.

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 have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative 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 5, 1998, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3008.

Sincerely,

Tammy L. Samsel
Regional Director