

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CHARLES ATTARD,

Charging Party,

v.

INTERNATIONAL ASSOCIATION OF
MACHINISTS,

Respondent.

Case No. SF-CO-2-M

PERB Decision No. 1474-M

February 7, 2002

Appearance: Charles Attard, on his own behalf.

Before Amador, Baker and Whitehead, Members.

DECISION

WHITEHEAD, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by Charles Attard (Attard) of a Board agent's dismissal of his unfair practice charge. The charge alleged that the International Association of Machinists (IAM) violated the Meyers-Milias-Brown Act (MMBA)¹ by failing to properly represent Attard in violation of the IAM's duty of fair representation. The Board agent dismissed the charge for failure to state a prima facie violation of the MMBA.

After reviewing the entire record in this matter including Attard's unfair practice charge and amended unfair practice charge, the Board agent's warning and dismissal letters, and Attard's appeal from dismissal, the Board dismisses Attard's charge based on the following.

¹MMBA is codified at Government Code section 3500 et seq.

BACKGROUND

Attard is an employee of the City and County of San Francisco and is in a bargaining unit represented by the IAM.

According to the charge, Attard has had disputes with his supervisor, Walter Potselueff (Potselueff), extending back to 1994 when Attard was injured on the job, allegedly in part due to improper supervision by Potselueff. More recently, Attard claims that from December 2000 through May 2001 Potselueff assigned him more work than others, causing him to miss breaks and lunches, and that Potselueff consistently assigned him work that took him to dangerous parts of San Francisco. Attard claims breaks and lunches are covered by the collective bargaining agreement between the City and County of San Francisco and the IAM.

On April 25, 2001 Attard and two coworkers complained to John Moran (Moran), business agent for the IAM, about the treatment received from Potselueff. Moran was the assigned business agent for Attard's work site. Attard's unfair practice charge alleges that Moran tried to convince the three employees that filing "harassment charges" against Potselueff would "present problems down the road." The charge further alleges that two weeks later, Moran met with Potselueff and Potselueff's supervisor, George Reynolds (Reynolds). According to Attard, this meeting occurred without the knowledge or consent of the three employees after they specifically requested the chance to be present in any meeting regarding the complaints. Attard was not at work on the date of Moran's meeting with Potselueff and Reynolds.

On May 24, 2001 Attard had a conversation with Charles Netherby (Netherby) of the IAM. Attard states that Netherby is Moran's boss at the IAM. The day following his

conversation with Netherby, Attard dropped off a three page typed document in an envelope for Netherby which listed Attard's harassment charges against Potselueff. According to the charge, on June 27, 2001, Attard noticed the documents he had provided to Netherby on Potselueff's desk. The documents were highlighted with a yellow highlighter. Attard concludes that Moran gave Potselueff the material.

On May 29, 2001 Moran allegedly missed an appointment with Attard and two other employees. According to the charge, when Attard asked him about the missed appointment, Moran responded that he had not written it down. Moran met with the employees, including Attard, two days later. Moran allegedly told them that all he could do for them was have a meeting with a mediator from the Employee Assistance Program (EAP).

As a result of Attard's feeling of mistrust toward the union following his belief that Moran furnished his three page harassment charge document to Potselueff, he and his fellow employees decided to attend any EAP meeting without Moran and without the IAM.

Without being specific as to the dates of his requests or the method of making his requests, in his charge Attard claims he repeatedly asked Moran to file a written grievance on his behalf.

DISCUSSION

In reviewing an appeal from a Board agent's dismissal for failure to state a prima facie case, the Board assumes that the essential facts alleged in the unfair practice charge are true. (San Juan Unified School District (1977) EERB Decision No. 12.)² In analyzing the IAM's conduct against a duty of fair representation standard, the Board therefore assumes that Attard

²Prior to January 1978, PERB was known as the Educational Employment Relations Board or EERB.

asked that a written grievance be filed on his behalf and that the document he drafted and provided to Netherby of the IAM was given by the IAM to his supervisor.

Although the MMBA does not expressly impose a statutory duty of fair representation, under the MMBA "unions owe a duty of fair representation to their members, and this requires them to refrain from representing their members arbitrarily, discriminatorily, or in bad faith."

(Hussey v. Operating Engineers (1995) 35 Cal.App.4th 1213, 1219 [42 Cal.Rptr.2d 389]

(Hussey.) The duty of fair representation is not breached by mere negligence. (Id., citing

Castelli v. Douglas Aircraft Co. (9th Cir. 1985) 752 F.2d 1480, 1482.) The court stated in

Hussey, at page 1219 that:

A union is accorded wide latitude in the representation of its members, and courts are reluctant to interfere with a union's decisions in representing its members absent a showing of arbitrary exercise of the union's power. [See Steelworkers v. Rawson (1990) 495 U.S. 362, 374; Galindo v. Stoodly Co. (9th Cir. 1986) 793 F.2d 1502, 1515.]

Under the other three acts administered by the Board³, the Board has held that in order to state a prima facie violation of the duty of fair representation the charging party "must, at a minimum, include an assertion of facts from which it becomes apparent how, in what manner, the exclusive representative's action or inaction was without a rational basis or devoid of honest judgment." (Reed District Teachers Association, CTA/NEA (Reyes) (1983) PERB Decision No. 332.) The duty of fair representation is not breached by a refusal to pursue a grievance if a union has made an honest, reasonable determination that the grievance lacks

³The Board also administers the Educational Employment Relations Act (Sec. 3540 et seq.), the Ralph C. Dills Act (Sec. 3512 et seq.) and the Higher Education Employer-Employee Relations Act (Sec. 3560 et seq.).

merit. (American Federation of State, County and Municipal Employees, Local 2620 (Moore) (1988) PERB Decision No. 683-S.) As this approach is consistent with Hussey and federal precedent (Vaca v. Sipes (1967) 386 U.S. 171, 191-192 [64 LRRM (BNA) 2369]), it is adopted by the Board as the standard for evaluating an alleged breach of the duty of fair representation under the MMBA as well.

In applying this standard, the Board focuses on whether the union's judgment "had a rational basis, or was reached for reasons that were arbitrary or based upon invidious discrimination," not on whether the union's judgment was "correct." (Sacramento City Teachers Association (Fanning, et al.) (1984) PERB Decision No. 428.)

With regard to the request that a grievance be filed, it is apparent from Moran's actions in presenting the allegations to Potselueff and Reynolds verbally that he was of the opinion that a written grievance was without merit. This finding is bolstered by Moran's initial position, communicated directly to Attard, that the filing of a grievance would "create problems down the road." In a later discussion with Attard and two coworkers about their complaints, Moran informed Attard and the coworkers that all he could do for them was set up an EAP meeting. While Attard may not agree with Moran's decision not to file a written grievance, it cannot be said that Moran's approach was arbitrary, discriminatory or in bad faith. Attard has not met his burden of showing the judgment of Moran and the IAM was without a rational basis or was reached for reasons that were arbitrary or based upon invidious discrimination.

Attard also alleged that the IAM turning over Attard's documents to his supervisor breached the duty of fair representation owed to him. While the IAM's approach in presenting the allegations to management in such a fashion may not be the best model to follow in representation of individual employees, without more regarding an improper motive, it is

within the wide latitude afforded a union in representing its members in disputes with management.

Attard's unfair practice charge fails to state a prima facie violation by the IAM of the duty of fair representation owed to Attard under the MMBA and on that basis must be dismissed.

ORDER

The unfair practice charge in Case No. SF-CO-2-M is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Amador and Baker joined in this Decision.