

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



MARILEE (MIMI) DE LAUER,

Charging Party,

v.

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION,

Respondent.

Case No. SF-CO-608-E

PERB Decision No. 1523

May 13, 2003

Appearance: Marilee (Mimi) DeLauer, on her own behalf.

DECISION

NEIMA, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Marilee (Mimi) DeLauer (DeLauer) of a Board agent's dismissal (attached) of her unfair practice charge. The charge and first amended charge alleged that the California School Employees Association (CSEA) violated its duty of fair representation by failing to assist DeLauer in obtaining a 90-day leave of absence from her employment with the Sonoma Valley Unified School District (SVUSD); failing to assist her in recovering her permanent position when she returned after resigning and taking a vacation; failing to provide her with workers' compensation forms she requested; and failing to assist her in remedying a hostile environment at the Santa Rosa Junior College (SRJC) where DeLauer

was a student. DeLauer contended that CSEA's alleged conduct violated its duty of fair representation guaranteed by section 3544.9 of the Educational Employment Relations Act (EERA)¹ and thereby violated EERA section 3543.6(b).²

DeLauer had previously filed charges against SRJC which were rejected on grounds that DeLauer, as a student, could not state a prima facie case under EERA against SRJC.³ She also filed a charge against the SVUSD based, in part, on events related to the allegations in the instant case.⁴

¹ EERA is codified at Government Code section 3540 et seq. EERA 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.

² EERA section 3543.6 provides, in pertinent part:

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.

³ See Case No. SF-CE-2258-E, dismissal affirmed in Santa Rosa Junior College (2003) PERB Decision No. 1511; Case No. SF-CO-609-E, dismissed April 26, 2002, no appeal filed.

⁴ See Case No. SF-CE-2268-E, dismissal affirmed in Sonoma Valley Unified School District (2003) PERB Decision No. 1522.

The Board agent dismissed DeLauer's charge in the instant case on grounds that:

(1) DeLauer's allegations regarding CSEA's failure to assist her in obtaining a leave of absence were not timely; (2) DeLauer's submission showed that her resignation was unconditional and, under SVUSD policy, she was not entitled to reinstatement when returning after her resignation; and (3) CSEA's duty of fair representation does not extend to complaints filed by DeLauer against faculty at SRJC.

DE LAUER'S APPEAL

On appeal, DeLauer reasserts that CSEA failed to represent her regarding her requests for leave and reinstatement, but that CSEA assisted another employee in securing a leave of absence. She also reasserts that she believed her resignation to be conditional on preservation of her seniority, salary level, and benefits upon her return to work. The Board finds that the Board agent correctly disposed of those allegations and that the dismissal was free of prejudicial error.

DeLauer also submits new, detailed allegations regarding interpersonal incidents involving CSEA staff; describes occurrences which she contends created a hostile environment at SRJC; reports derogatory comments made about her and privacy violations allegedly attributable to CSEA; and reasserts that CSEA failed to assist her in remedying a hostile environment at SRJC.

PERB Regulation 32635(b)⁵ provides: "Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence." DeLauer has failed to demonstrate good cause to allow presentation of her additional allegations and

⁵ PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

documents on appeal because none of those materials contain information that she could not have obtained, through reasonable diligence, prior to issuance of the Board agent's dismissal letter. Accordingly, the Board has not considered any new allegations in resolving DeLauer's appeal.

The Board agent did not address DeLauer's contention that a CSEA official failed to provide a workers' compensation form upon request. However, DeLauer did not specify when this allegation occurred, so there is no indication whether the allegation was timely. Moreover, the duty of fair representation arises from a union's status as exclusive representative for purposes of collective bargaining and contract administration. Providing forms related to proceedings in forums unrelated to the collective bargaining agreement does not fall within the union's duty of fair representation. (See California School Employees Association (Garcia) (2001) PERB Decision No. 1444; San Francisco Classroom Teachers Association, CTA/NEA (Chestangue) (1985) PERB Decision No. 544.) DeLauer has offered no facts to support a finding that CSEA had a duty to provide her with such forms. Accordingly, omission of this issue in the warning and dismissal letters was not prejudicial.

After reviewing the charge and attached documents, amended charge and attached documents, the warning and dismissal letters, and DeLauer's appeal, the Board finds that the warning and dismissal letters are free of prejudicial error and adopts them as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. SF-CO-608-E is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Members Baker and Whitehead joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
1330 Broadway Suite 1532
Oakland, CA 94612
Telephone: (510) 622-1023
Fax: (510) 622-1027



July 30, 2002

Marilee De Lauer

Re: Marilee (Mimi) De Lauer v. California School Employees Association
Unfair Practice Charge No. SF-CO-608-E, First Amended Charge
DISMISSAL LETTER

Dear Ms. De Lauer:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on April 10, 2002. Marilee De Lauer alleges that the California School Employees Association violated the Educational Employment Relations Act (EERA)¹ by failing to represent her.

I indicated to you in my attached letter dated July 12, 2002, 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 July 19, 2002, the charge would be dismissed.

The warning letter indicated that CSEA did not violate its duty of fair representation by failing to obtain a permanent position for De Lauer after she resigned. The warning letter also indicated CSEA did not violate its duty of fair representation by failing to help De Lauer remedy a hostile environment at the Santa Rosa Junior College District because those issues were outside the collective bargaining agreement between CSEA and the Sonoma Valley Unified School District. On July 19, 2002, I received a first amended charge.

In or about January 2001, the SVUSD denied De Lauer's leave of absence request. De Lauer alleges CSEA helped another bargaining unit member to get a leave of absence request approved but did not help her.

On January 30, 2001, De Lauer wrote to the SVUSD and stated, in pertinent part:

I have previously requested a leave of absence. At the time the school board has denied my formal request due to the lack of a thorough account of pertinent information. Thus, based on the Board's last decision I will tender my resignation with the intent

¹ EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

to return as follows: My leave is to continue my advance education to obtain a Liberal Arts Degree. Upon my return, I would like to be able to have the following considerations that have been granted similar what other employees of SVUSD received.

Restoration of sick leave.
Migration of salary back to current level.
Reinstate seniority.

The SVUSD accepted De Lauer's resignation and did not hold De Lauer's bus driver position open for her while she traveled to Italy.

The first amended charge alleges CSEA should have helped with the hostile environment at the SRJCD because:

Both CSEA driver trainer/safety instructor, John Hill, stepdaughter and CSEA president Hensic daughters are students at the SRJC. Both of these students have/or have had the same instructors that created a hostile environment for me and wrote derogatory remarks on my records. One of the my instructors is the head of the department for both of the CSEA members children's majors, pharmacology and nursing, respectively. [sic]

The SRJCD disseminated false information regarding De Lauer. CSEA failed to help De Lauer with grievances at the SRJCD. The first amended charge alleges CSEA should have helped with the grievances because:

Medical reports and my son's medical reports from my own personal physician were obtained by CSEA members and disseminated to SVUSD without my permission? A medical personnel at my personal physician has children that attend Prestwood Elementary. Her husband is a fireman and friends with CSEA member Deely also a fireman. CSEA member school bus driver Kirkwood has a husband that is a fireman and is employed with SRJC? Kirkwood's husband has two CSEA members that both work at Prestwood Elementary School?

The above-stated information fails to state a prima facie violation for the reasons stated below. The charge alleges CSEA violated its duty of fair representation by failing to help with the following matters: (a) obtaining approval of De Lauer's leave of absence request; (b) restoring De Lauer's position; and (c) the hostile environment at the SRJCD. Each allegation is addressed below.

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 Respondent's conduct was arbitrary, discriminatory or in bad faith.

EERA section 3541.5(a)(1) prohibits PERB from issuing a complaint with respect to "any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (Gavilan Joint Community College District (1996) PERB Decision No. 1177.) The charging party bears the burden of demonstrating that the charge is timely filed. (Tehachapi Unified School District (1993) PERB Decision No. 1024; State of California (Department of Insurance) (1997) PERB Decision No. 1197-S.)

De Lauer filed this charge on April 10, 2002, therefore the statute of limitations period extends back to include events occurring on or after October 10, 2001. De Lauer knew that CSEA had failed to help her get SVUSD approval of her leave request in January 2001, more than a year before she filed this charge. Thus, the allegation that CSEA failed to help her obtain a leave of absence is untimely filed and outside the jurisdiction of PERB.

The charge fails to demonstrate CSEA violated its duty of representation by failing to obtain a permanent position for De Lauer when she returned from her trip. As noted in the warning letter, the SVUSD does not guarantee re-employment. Although De Lauer alleges her resignation was conditioned on her position and benefits being restored, the charge does not demonstrate the District accepted her resignation as conditional in nature. The District denied De Lauer's request for a leave of absence on the same terms. Thus, the charge fails to demonstrate CSEA acted arbitrarily by failing to help De Lauer obtain a permanent position after she resigned.

The warning letter indicated that CSEA did not violate its duty of fair representation by failing to help her remedy a hostile environment at the Santa Rosa Junior College District because those issues were outside the collective bargaining agreement between CSEA and the Sonoma Valley Unified School District. The first amended charge does not demonstrate why CSEA's duty extends to "grievances" filed by De Lauer against the SRJCD where she is a student. Although CSEA members may be tangentially connected to the SRJCD, CSEA's duty is limited in scope. Thus, the charge fails to demonstrate a prima facie violation.

The first amended charge does not correct the deficiencies noted in the warning letter and therefore the charge is dismissed.

Right to Appeal

Pursuant to PERB Regulations,² 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. (Regulation 32635(a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Regulations 32135(a) and 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Regulations 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

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. (Regulation 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 Regulation 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. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Regulation 32135(c).)

² PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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. (Regulation 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
General Counsel

By
Tammy Sam~~uel~~
Regional Attorney

Attachment

cc: Rita Hensic

PUBLIC EMPLOYMENT RELATIONS BOARD



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July 12, 2002

Marilee De Lauer

Re: Marilee (Mimi) De Lauer v. California School Employees Association
Unfair Practice Charge No. SF-CO-608-E
WARNING LETTER

Dear Ms. De Lauer:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on April 10, 2002. Marilee De Lauer alleges that the California School Employees Association violated the Educational Employment Relations Act (EERA)¹ by failing to represent her. My investigation revealed the following information.

CSEA exclusively represents the classified bargaining unit at the Sonoma Valley Unified School District. De Lauer is a bus driver for the SVUSD and is a student at the Santa Rosa Junior College District.

In January 2001, De Lauer was a permanent bus-driver and requested a 90-day absence to study art in Italy. The SVUSD denied De Lauer's request and De Lauer resigned. De Lauer resigned believing her salary and benefits would be restored when she returned. In May 2001 De Lauer returned to the SVUSD and learned her bus route had been taken over by another employee. De Lauer is now a substitute bus driver. De Lauer alleges CSEA President Rita Hensic refused to help her regain her permanent position with the SVUSD.

SVUSD Personnel Policy 4217.2 provides an employee's resignation once presented and accepted by the Superintendent may not be withdrawn by the employee. Employees who have resigned from the SVUSD may apply for vacant positions within the SVUSD. However, the SVUSD does not guarantee re-employment into such positions.

In the fall semester of 2001, De Lauer was enrolled at the SRJCD. De Lauer alleges during this time SRJCD employees created a hostile environment and CSEA President Rita Hensic failed to help her remedy the situation at the SRJCD.

De Lauer would like to regain her permanent position, salary, benefits, and "would like to eliminate any traces of harassment, hostile work environment, including subliminal harassment over FCC two-way radio and otherwise. . ."

¹ EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

The above-stated information fails to state a prima facie violation for the reasons that follow.

EERA section 3541.5(a)(1) prohibits PERB from issuing a complaint with respect to "any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (Gavilan Joint Community College District (1996) PERB Decision No. 1177.) The charging party bears the burden of demonstrating that the charge is timely filed. (Tehachapi Unified School District (1993) PERB Decision No. 1024; State of California (Department of Insurance) (1997) PERB Decision No. 1197-S.)

De Lauer filed this charge on April 10, 2002, therefore, the statute of limitations period extends back to include events occurring on or after October 10, 2001. De Lauer alleges CSEA failed to help her regain her permanent position following her resignation. De Lauer returned from her trip and learned she could not return to her permanent position in May 2001, several months beyond the statute of limitations period. Thus, the allegation that CSEA violated its duty of fair representation by failing to help De Lauer regain her permanent position is untimely filed and outside PERB's jurisdiction.

Even if timely filed the charge fails to state a prima facie violation for the reasons that follow.

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 Respondent'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 omitted.]

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 grievance context, the duty of fair representation is limited to contractually-based remedies under the union's exclusive control. (California School Employees Association (Garcia) (2001) PERB Decision No. 1441.) A contractually-based remedy is one found in the collective bargaining agreement between the District and the Association. As such, PERB will dismiss charges based on a union's failure to pursue noncontractual administrative or judicial remedies. (Id.) Since the employee may retain private counsel for representation in these noncontractual matters, the union's refusal does not bar the individual from seeking redress on his or her own. (California State Employees Association (Darzins) (1985) PERB Decision No. 546-S.)

The charge alleges CSEA failed to help De Lauer remedy a hostile environment at the SRJCD. De Lauer's issues with the SRJCD are outside of the collective bargaining agreement between CSEA and the SVUSD. Thus, CSEA did not violate the EERA by failing to help her with the SRJCD.

Nor does CSEA's failure to help De Lauer regain her permanent position demonstrate a prima facie violation. The SVUSD's policy indicates resignations may not be withdrawn. Nor does the SVUSD guarantee re-employment. As such, the charge does not present any facts demonstrating CSEA violated its duty of fair representation by failing to obtain a permanent position for De Lauer after she resigned. Thus, the charge must be dismissed.

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 that 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 July 19, 2002, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Tammy Samsel
Regional Attorney