

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



JAMES PAUL PAIGE,

Charging Party,

v.

AFT LOCAL 1521,

Respondent.

Case No. LA-CO-1191-E

PERB Decision No. 1769

June 10, 2005

Appearance: James Paul Paige, on his own behalf.

Before Duncan, Chairman; Whitehead and Shek, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by James Paul Paige (Paige) of a Board agent's dismissal (attached) of his unfair practice charge. The unfair practice charge alleged that the AFT Local 1521 (AFT) violated the Educational Employment Relations Act (EERA)¹ by canceling his arbitration hearing and writing falsehoods about him. Paige alleged that this conduct constituted a violation of EERA section 3543.6.

The Board has reviewed the entire record in this matter, including the unfair practice charge and amended unfair practice charge, the Board agent's warning and dismissal letters, and Paige's appeal. The Board concludes that the Board agent's warning and dismissal letters are free of prejudicial error and adopts them as the decision of the Board itself.

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

DISCUSSION

Paige's appeal consists of a handwritten note stating:

I cooperated. The three evaluations done during the summer do not count because it is an intersession. The Local falsified the other evaluations, because they wanted to steal my 60 days of sick leave for the District, and also use them for a phoney (sic) excuse to not go to arbitration.

Paige attached to the appeal a copy of a letter dated December 13, 2002 from Dean Athans, Dean of Academic Affairs, thanking him for his cooperation; a copy of an unsatisfactory performance review for Paige from July 2003; a page from the District/AFT memorandum of understanding quoting Article 15, section A.3. that, "Time served on intersession assignments does not count toward tenure"; and a copy of a pay stub showing a sick leave balance of 60 hours.

The information in the appeal raises new charge allegations and new supporting evidence that were not previously presented and that were known to Paige when he filed his unfair practice charge and amended unfair practice charge. PERB Regulation² 32635(b) precludes a charging party from raising new allegations or new supporting evidence on appeal without good cause. Paige did not provide any justification for presenting this information at this point in the proceedings. Consequently, we find no good cause to accept the new allegations and supporting evidence, and therefore, decline to consider them. Furthermore, the appeal did not otherwise meet the requirements of PERB Regulation 32635(a)(1).³

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

³PERB Regulation 32635(a)(1) provides, in pertinent part:

The Appeal shall:

(1) State the specific issues of procedure, fact, law or rationale to which the appeal is taken;

ORDER

The unfair practice charge in Case No. LA-CO-1191-E is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member Shek joined in this Decision.

(2) Identify the page or part of the dismissal to which each
appeal is taken;

(3) State the grounds for each issue stated.

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916)327-8384
Fax: (916) 327-6377



February 25, 2005

James Paul Paige

Re: James Paul Paige v. AFT Local 1521
Unfair Practice Charge No. LA-CO-1191-E
DISMISSAL LETTER

Dear Mr. Paige:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on February 1, 2005. James Paul Paige alleges that the Los Angeles College Faculty Guild, Local 152 AFT violated the Educational Employment Relations Act (EERA)¹ by denying him its duty of fair representation.

I indicated to you in my attached letter dated February 7, 2005, 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 February 17, 2005, the charge would be dismissed.

The warning letter indicated that the Guild had explained its decision not to proceed to arbitration on Paige's behalf, and that the charge failed to demonstrate the Guild had acted in an arbitrary, discriminatory or bad faith manner.

The first amended charge alleges that Michael Morse, an administrator at the Los Angeles Community College, evaluators, and the campus police officers harassed Paige. These individuals are not agents of the Guild. (See generally Inglewood Unified School District (1990) PERB Decision No. 792.) As their conduct is not attributable to the Guild these allegations must be dismissed.

As discussed in the Warning Letter, the Guild initially agreed to take Paige's grievance to arbitration in a November 3, 2003, letter. The Guild later refused to proceed to arbitration in an August 4, 2004, letter. The Warning Letter indicated that in the August 4, 2004, letter the Guild explained why it was not pursuing the grievance to arbitration and that the charge failed

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 provide facts demonstrating the Guild's conduct was arbitrary, discriminatory or in bad faith.

Paige contends the Guild's conduct was arbitrary, discriminatory or in bad faith because the Guild did not inform him that its initial agreement to proceed to arbitration was "provisional" pending further review of the documents underlying his grievance. When Guild Representative Christine Rodriguez requested the documents underlying his grievance she indicated she was "missing documents" and "wanted as many as possible." Paige alleges that Chief Grievance Officer Darrell Eckersley's statement in the August 4, 2004, letter that, "Our decision [to proceed to arbitration] was provisional based on our being able to review all of the documents in your issue, documents that we did not have at the time," was a lie because the Guild never informed Paige that its original decision was merely provisional. Paige believed that Rodriguez was going to get him rehired before the arbitration because his performance evaluations were incorrect.

As stated in the warning letter, 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. (United Teachers of Los Angeles (Collins) (1982) PERB Decision No. 258.) Even if the Guild's initial decision to proceed to arbitration was not provisional and the Guild's letter characterizing it as such was a lie, the charge does not state a prima facie violation. Although Paige relied on the Guild's initial letter and is very upset by the Guild's reversal of course without warning, the Guild provided a reasonable explanation for its decision to no longer proceed to arbitration.² The filing of a grievance does not commit the union to proceed through all steps of the grievance process. A union may withdraw a grievance later in the process if facts come to light which cast doubts on the merits of the grievance. (See California State Employees Association (Cohen) (1993) PERB Decision No. 980-S.) The charge does not demonstrate that the Guild failed to base its decision on a rational assessment of the grievance. Thus, the charge fails to state a prima facie violation and is dismissed.

Right to Appeal

Pursuant to PERB Regulations,³ 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

² The Guild's August 4, 2004, letter stated in pertinent part, "Your department gave you a process of several evaluations with recommendations for improvement. Following the final evaluation in Spring 2003, which was unsatisfactory, a committee was formed to evaluate you in the Summer 2003 session. You refused to cooperate with your evaluators during each of the evaluations of Spring 1999, Fall 2002, Spring 2003, and Summer 2003. You refused to accept the written recommendation for improvement for each of these evaluations. You have received a progressive evaluation over several semesters. [sic] You were removed from the seniority list following this long process, according to Article 19."

³ PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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. (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).)

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.)

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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 Samel
Regional Attorney

Attachment

cc: Lawrence Rosenzweig

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916)327-8384
Fax: (916) 327-6377



February 7, 2005

James Paul Paige

Re: James Paul Paige v. Los Angeles College Faculty Guild, Local 152 AFT
Unfair Practice Charge No. LA-CO-1191-E
WARNING LETTER

Dear Mr. Paige:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on February 1, 2005. James Paul Paige alleges that the Los Angeles College Faculty Guild, Local 152 AFT violated the Educational Employment Relations Act (EERA)¹ by denying you its duty of fair representation. My investigation revealed the following information.²

The Los Angeles College Guild, Local 152 AFT exclusively represents you. On November 3, 2003, the Guild agreed to proceed with your grievance to arbitration. On August 4, 2004, the Guild informed you that it would not proceed to arbitration. The August 4, 2004 letter indicated that its initial decision on your grievance was provisional pending a thorough review of the documents underlying the grievance. The letter also indicated that the Guild's Grievance Review Committee decided not to pursue the grievance based on the following reasons:

Your department gave you a process of several evaluations with recommendations for improvement. Following the final evaluation in Spring 2003, which was unsatisfactory, a committee was formed to evaluate you in the Summer 2003 session. You refused to cooperate with your evaluators during each of the evaluations of Spring 1999, Fall 2002, Spring 2003, and Summer 2003. You refused to accept the written recommendation for improvement for each of these evaluations. You have received a progressive evaluation over several semesters. [sic] You were removed from the seniority list following this long process, according to Article 19.

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.

² On February 7, 2004, I called the telephone number listed on the charge, but did not reach you. Nor did that number provide an opportunity to leave a voicemail message.

The above-stated information fails to demonstrate 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.]

The Guild explained its refusal to pursue your grievance to arbitration in its August 4, 2004 letter. The Guild's stated reasons do not, on their face, demonstrate the Guild acted in an arbitrary, discriminatory, or bad faith manner. Nor does the charge provide information explaining the Guild's actions were arbitrary, discriminatory, or in bad faith. 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.) Thus, this charge fails to demonstrate a prima facie violation and must be dismissed.

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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 February 17, 2005, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Tammy Samsel
Regional Attorney

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