

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



THOMAS JOSEPH CHAMBERS,

Charging Party,

v.

UNITED TEACHERS OF LOS ANGELES,

Respondent.

Case No. LA-CO-1194-E

PERB Decision No. 1781

October 27, 2005

Appearances: Thomas Joseph Chambers, on his own behalf; Geffner & Bush by Erica Deutsch, Attorney, for United Teachers of Los Angeles.

Before Duncan, Chairman; McKeag and Neuwald, Members.

DECISION

NEUWALD, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Thomas Joseph Chambers (Chambers) of a Board agent's dismissal (attached) of his unfair practice charge. The unfair practice charge alleges that United Teachers of Los Angeles (UTLA) violated the Educational Employment Relations Act (EERA)¹ by its failure to meet its duty of fair representation.

The Board has reviewed the entire record including the unfair practice charge, the amended unfair practice charge and attached documents, UTLA's position statement, the warning and dismissal letters, Chambers' appeal and UTLA's response. The Board finds the Board agent's dismissal to be free of prejudicial error and adopts it as a decision of the Board itself.

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

On appeal, Chambers concedes that he failed to state a prima facie case, but presents new charge allegations and new supporting evidence that were not previously presented and that were known to Chambers 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. Chambers has failed to demonstrate good cause for the presentation of new allegations and/or supporting evidence on appeal, and nothing in the documents filed related to the appeal indicates good cause.

ORDER

The unfair practice charge in Case No. LA-CO-1194-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member McKeag joined in this Decision.

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

PUBLIC EMPLOYMENT RELATIONS BOARD

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



June 29, 2005

Thomas Joseph Chambers

Re: Thomas Joseph Chambers v. United Teachers of Los Angeles
Unfair Practice Charge No. LA-CO-1194-E
DISMISSAL LETTER

Dear Mr. Chambers:

I indicated to you in my attached letter dated June 8, 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 June 17, 2005, the charge would be dismissed. That deadline was later extended, and you filed a First Amended Charge on June 20, 2005.

The warning letter indicated that the charge failed to demonstrate that UTLA acted in arbitrary discriminatory or bad-faith manner. The first amended charge indicates that UTLA should have pursued Chambers' grievance regarding a service report to arbitration. The warning letter indicated that Chambers had acknowledged that he had falsified his resume and told the principal "screw you, screw you." In the first amended charge, Chambers alleges he did not make those admissions.

UTLA did not pursue Chambers' 2004 grievance because he was not a member of the bargaining unit according to Article 1.1 of the parties' collective bargaining agreement. Chambers alleges UTLA engaged in bad-faith by capitulating to the District on this issue. Chambers contends that UTLA's failure to perform this ministerial act extinguished his rights.

The warning letter stated, in pertinent part,

Although UTLA ignored Chambers' request to have a different representative, the charge does not demonstrate Laurans acted in an arbitrary, discriminatory or bad-faith manner. Moreover, Laurans did not decide whether Chambers' grievances would be pursued to arbitration. The GRC made those decisions. As such, the charge must be dismissed.

In the first amended charge Chambers alleges that UTLA representative Lydia Laurans deliberately delayed his grievance and is incompetent to represent employees due in part to a brain injury she received.

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

As explained more thoroughly 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. (See United Teachers of Los Angeles (Collins) (1982) PERB Decision No. 258.)

With regard to when "mere negligence" might constitute arbitrary conduct, the Board observed in Coalition of University Employees (Buxton) (2003) PERB Decision No. 1517-H that, under federal precedent, a union's negligence breaches the duty of fair representation "in cases in which the individual interest at stake is strong and the union's failure to perform a ministerial act completely extinguishes the employee's right to pursue his claim." (Quoting Dutrisac v. Caterpillar Tractor Co. (9th Cir. 1983) 749 F.2d 1270 [113 LRRM 3532], at p. 1274; see also, Robesky v. Quantas Empire Airways Limited (9th Cir. 1978) 573 F.2d 1082 [98 LRRM 2090].)

Chambers' statements that he did not admit to falsifying his resume or saying "screw you, screw you" to his principal are taken as true at this level of the process. (Mark West Union School District (1993) PERB Decision No. 1011.) However, even taking Chambers' denial as true, the charge does not demonstrate UTLA acted in a discriminatory, bad faith or arbitrary manner when it decided not to pursue that grievance to arbitration. It appears instead that UTLA exercised its discretion to determine how far to pursue the grievance. UTLA also provided Chambers' with an opportunity to appeal the initial decision of the Grievance Review Committee.

Chambers also argues UTLA should have challenged the District's determination that he could not file a grievance based on Article 1.1 of the parties' collective bargaining agreement, which excludes individuals from the bargaining unit if they have not worked the requisite number of hours. Chambers contends the District created the conditions by which Article 1.1 could be invoked by blackballing him and therefore UTLA should have argued that the article did not apply to him. Although UTLA's decision extinguished Chambers' right to pursue this grievance, that conduct was not a negligent failure to perform a ministerial act, but a legitimate exercise of its discretion. UTLA has the right under EERA to exercise its discretion to determine how far to pursue a grievance. (United Teachers of Los Angeles (Collins) (1982) PERB Decision No. 258.) Here, the parties' collective bargaining agreement had specific language excluding Chambers from the unit, and thereby from filing a grievance, and UTLA's decision to abide by that language, even if there was a rational argument to be made for pursuing the grievance does not demonstrate that UTLA acted in an arbitrary, discriminatory or bad faith manner.

Chambers also alleges Laurans deliberately delayed his grievance. Chambers contends the GRC was not reviewing the grievance for the six months between his Step II meeting and the

GRC's decision. Instead Chambers alleges the grievance was simply sitting on Laurans' desk. As UTLA acted to toll the grievance timelines with the employer, the facts do not demonstrate that UTLA's conduct violated the Act.

For the above-stated reasons, and those stated in the warning letter, the above-referenced charge is dismissed.

Right to Appeal

Pursuant to PERB Regulations,¹ 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. (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

¹ PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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.)

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 Samsel
Regional Attorney

Attachment

cc: Erica Deutsch

PUBLIC EMPLOYMENT RELATIONS BOARD

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



June 8, 2005

Thomas Joseph Chambers

Re: Thomas Joseph Chambers v. United Teachers of Los Angeles
Unfair Practice Charge No. LA-CO-1194-E
WARNING LETTER

Dear Mr. Chambers:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on March 30, 2005. Thomas Joseph Chambers alleges that the United Teachers of Los Angeles violated the Educational Employment Relations Act (EERA)¹ by failing to provide him its duty of fair representation. My investigation revealed the following information.

Chambers is an Adult Education substitute teacher for the Los Angeles Unified School District. Chambers alleges UTLA violated the EERA by failing to submit his grievances to arbitration in a timely manner. More specifically, Chambers alleges UTLA representative Lydia Laurans engaged in the pattern of careless representation which led to his termination.

On October 18, 2004, Chambers filed Grievance No. 2002-01514 regarding the District's decision to give his Southgate class to another instructor. Chambers alleges, "Ms. Laurans left my Southgate grievance to linger on her desk for nearly a year." On May 22, 2003, UTLA's Grievance Review Committee reviewed this grievance to determine whether to proceed to arbitration. The GRC decided not to proceed and on June 17, 2003, UTLA acknowledged Chambers' decision to appeal that determination. The GRC continued to meet on several occasions regarding Chambers' appeal. On July 25, 2003, Laurans requested information regarding the grievance from the District. On June 21, 2004, the parties settled this grievance.

On October 9, 2003, Principal Theresa Villa issued Chambers an unsatisfactory Certificated Day-To-Day Substitute Teacher Service Report. On October 20, 2003, Chambers filed a grievance regarding this report. Chambers admitted that he had falsified his resume and had told the Principal, "screw you, screw you." On January 23, 2004, the parties held a Step I meeting. On January 26, 2004, Laurans requested a Step II meeting, but it was not held because the District had requested to toll the grievance timelines until March 22, 2004. The parties scheduled a Step II meeting for May 6, 2004. They later rescheduled that meeting for

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.

May 19, 2004. On May 20, 2004, UTLA requested the timelines be tolled while the GRC reviewed the grievance. On November 4, 2004, the GRC met and decided not to pursue the grievance to arbitration based on Chambers' acknowledgment of his actions. On January 13, 2005, the GRC heard Chambers' appeal. On January 19, 2005, UTLA notified Chambers that it was not proceeding to arbitration.

On October 21, 2004, Site Administrator Dominick Cistone of the Abram Friedman Occupational Center issued Chambers an unsatisfactory Certificated Day-to-Day Substitute Teacher Service Report for inadequate service on October 11, 2004 and October 12, 2004. On October 26, 2004, Chambers filed a grievance regarding this report.

Although UTLA exclusively represents the certificated bargaining unit, Article 1.1 of the parties' CBA excludes certain positions from the bargaining unit. Article 1.1 provides, in pertinent part:

Excluded: All day-to-day substitutes, who are paid for fewer than one hundred days during the preceding school year; all part-time adult education teachers, including ROC/ROP and specially-funded adult education teachers, who are assigned for fewer than ten hours per week;

The District determined that Chambers was not a member of the UTLA-represented bargaining unit during the 2004-2005 school year based on the above-quoted language. UTLA accepted the District's refusal to process Chambers' grievance on this basis.

On January 24, 2005, Chambers confronted Laurans regarding his October 2003 grievance. Laurans noted that Chambers had selected another representative to represent him at the Step II meeting. Chambers believes Laurans made it clear she was punishing him for his decision to have this other representative accompany him to Step II meeting.

In addition to the handling the above referenced grievances, Chambers alleges UTLA violated its duty of fair representation by failing to change his union representative. In November 2004, Chambers requested that the UTLA President assign someone other than Laurans to his cases. In November 2004, Chambers made this request in writing to Terry Skotness. Skotness did not reply, nor did he return Chambers' telephone calls. On Carl Joseph's instruction, Chambers wrote another letter on November 26, 2004. UTLA did not reply.

The above-stated information 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.]

With regard to when "mere negligence" might constitute arbitrary conduct, the Board observed in Coalition of University Employees (Buxton) (2003) PERB Decision No. 1517-H that, under federal precedent, a union's negligence breaches the duty of fair representation "in cases in which the individual interest at stake is strong and the union's failure to perform a ministerial act completely extinguishes the employee's right to pursue his claim." (Quoting Dutrisac v. Caterpillar Tractor Co. (9th Cir. 1983) 749 F.2d 1270 [113 LRRM 3532], at p. 1274; see also, Robesky v. Quantas Empire Airways Limited (9th Cir. 1978) 573 F.2d 1082 [98 LRRM 2090].)

The facts demonstrate that UTLA successfully settled Chambers' 2002 grievance. Chambers' 2003 grievance proceeded on schedule until the District requested the timelines be tolled. UTLA accommodated the District's request, and in turn, the District accommodated UTLA's subsequent request to toll the timelines while the GRC reviewed the grievance. The facts do not demonstrate that UTLA's conduct and eventual refusal to proceed to arbitration was arbitrary, discriminatory, or in bad faith. Nor does UTLA's refusal to pursue Chambers' 2004 grievance demonstrate a prima facie violation as the parties' CBA excludes Chambers from the bargaining unit.

Although UTLA ignored Chambers' requests to have a different representative, the charge does not demonstrate Laurans acted in an arbitrary, discriminatory or bad faith manner. Moreover,

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Laurans did not decide whether Chambers' grievances would be pursued to arbitration. The GRC made those decisions. As such, 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 June 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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