

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



DEL M. GRACE,

Charging Party,

v.

BEAUMONT TEACHERS ASSOCIATION/CTA,

Respondent.

Case No. LA-CO-1410-E

PERB Decision No. 2259

April 26, 2012

Appearance: Anyiam Law Firm Inc. by Christian U. Anyiam, Attorney, for Del M. Grace.

Before Martinez, Chair; Dowdin Calvillo and Huguenin, Members.

DECISION

MARTINEZ, Chair: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by Del M. Grace (Grace) of a PERB Office of the General Counsel's dismissal (attached) of her unfair practice charge. The charge, as amended, alleged that the Beaumont Teachers Association/CTA (Association) violated the Educational Employment Relations Act (EERA)¹ by failing to represent Grace in her dispute against her employer, the Beaumont Unified School District (District), regarding the District's failure to give her timely notice of her non-reelection. The issue raised by the allegations in the charge was whether the Association breached its duty of fair representation. The Board agent dismissed the charge, concluding that it failed to state a prima facie case.

The Board has reviewed the entire record in this matter and given full consideration to the issues raised on appeal and the arguments of the parties. Based on our review and consideration, the Board finds the Board agent's warning and dismissal letters to be well-

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

reasoned, adequately supported by the record and in accordance with the applicable law.

Accordingly, the Board hereby dismisses the charge, adopting the warning and dismissal letters of the Board agent as the decision of the Board itself as supplemented by the following brief discussion of issues raised by the appeal.

DISCUSSION

Pursuant to PERB Regulation 32635, subdivision (a),² an appeal from dismissal shall:

- (1) State the specific issues of procedure, fact, law or rationale to which the appeal is taken;
- (2) Identify the page or part of the dismissal to which each appeal is taken;
- (3) State the grounds for each issue stated.

To satisfy the requirements of this regulation, the appeal must sufficiently place the Board and the respondent “on notice of the issues raised on appeal.” (*State Employees Trades Council United (Ventura, et al.)* (2009) PERB Decision No. 2069-H; *City & County of San Francisco* (2009) PERB Decision No. 2075-M.) An appeal that does not reference the substance of the Board agent’s dismissal fails to comply with PERB Regulation 32635, subdivision (a). (*United Teachers of Los Angeles (Pratt)* (2009) PERB Order No. Ad-381; *Lodi Education Association (Huddock)* (1995) PERB Decision No. 1124; *United Teachers – Los Angeles (Glickberg)* (1990) PERB Decision No. 846.) Likewise, an appeal that merely reiterates facts alleged in the unfair practice charge does not comply with PERB Regulation 32635, subdivision (a). (*Contra Costa County Health Services Department* (2005) PERB Decision No. 1752-M; *County of Solano (Human Resources Department)* (2004) PERB Decision No. 1598-M.)

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

Here, the appeal consists entirely of allegations and arguments previously made at the charge processing stage of this proceeding. The appeal advances no argument that was not considered and addressed by the Board agent in processing the charge. In fact, much of the appeal repeats in verbatim text from a document that accompanied the amended charge. The appeal does not reference any portion of the Board agent's determination or otherwise state the specific issues of procedure, fact, law or rationale to which the appeal is taken. Nor does it identify the page or part of the dismissal to which the appeal is taken or state the grounds. Thus, the appeal is subject to dismissal on this ground alone. (*City of Brea* (2009) PERB Decision No. 2083-M.)

ORDER

The unfair practice charge in Case No. LA-CO-1410-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Dowdin Calvillo and Huguenin joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
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Glendale, CA 91203-3219
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September 6, 2011

Christian U. Anyiam, Esq.,
Anyiam Law Firm, Inc.
10737 Laurel Street, Suite 102
Rancho Cucamonga, CA 91730

Re: *Del M. Grace v. Beaumont Teachers Association/CTA*
Unfair Practice Charge No. LA-CO-1410-E
DISMISSAL LETTER

Dear Mr. Anyiam:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 31, 2009. Del M. Grace (Ms. Grace or Charging Party) alleges that the Beaumont Teachers Association/CTA (Association or Respondent) violated the Educational Employment Relations Act (EERA or Act)¹ by failing to represent her when she was non-re-elected from employment.

Charging Party was informed in the attached Warning Letter dated August 11, 2011, 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 that 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 August 18, 2011, the charge would be dismissed.

After receiving the Warning Letter, Ms. Grace contacted the undersigned and was granted an extension of time to file an amended charge until August 25, 2011. On August 24, 2011, I had a telephone conversation with Ms. Grace and answered a question regarding service of the amended charge on the Respondent. On the morning of August 25, 2011, I had another telephone conversation with Ms. Grace, wherein she stated that the amended charge would be filed via facsimile that afternoon. Shortly thereafter, I received a telephone call from Christian Anyiam, who stated that he had been retained as counsel for Ms. Grace. Mr. Anyiam requested an additional extension of time of between five and seven days to respond to the Warning Letter. I stated to Mr. Anyiam that I had had several conversations with Ms. Grace, including most recently that morning, and Ms. Grace had not indicated either that she needed additional time to respond to the Warning Letter, or that she had retained counsel. To the contrary, Ms. Grace had stated that the amended charge would be filed that afternoon. I reminded Mr. Anyiam that Ms. Grace had already been granted an extension of time, and thus

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

I did not find good cause under the circumstances to grant the additional extension he sought. Shortly after that conversation ended, I received a conference call from both Ms. Grace and Mr. Anyiam. Ms. Grace confirmed that Mr. Anyiam now represented her. I granted a one-day additional extension of time until August 26, 2011 to file an amended charge. Later that afternoon, PERB received via facsimile from Mr. Anyiam a document "in response to" the Warning Letter. On August 26, 2011, an amended charge was timely filed. I consider these documents together to constitute the amended charge.

Information Provided in the Amended Charge

As summarized in the Warning Letter, Ms. Grace was employed as a probationary Nurse Practitioner in the Beaumont Unified School District (District) until June 3, 2009 when she was released from employment. The Warning Letter characterized her release by the District as due to a reduction in force, which Ms. Grace states is incorrect. Ms. Grace asserts that while a reduction in force was simultaneously underway at the District, her release from employment was due to non-reelection under Education Code section 44929. As such, Ms. Grace asserts that she was entitled to personal service of notice of non-reelection by the District, rather than service via U.S. mail. Ms. Grace asserts that the Association erroneously concluded by examination of some e-mail communications that she had authorized the District to serve her by mail. The Association informed Ms. Grace in writing on August 14, 2009 that it declined to represent her. The amended charge states:

It is more than mere negligence to deliberately rely on unreliable email communication to decline representation of a dues paying member where it is evident that the union action or inaction can subject the affected member to loss of her job.

For the reasons to follow, the charge, as amended, fails to correct the deficiencies outlined in the Warning Letter.

Discussion

As discussed in the Warning Letter, a union's duty of fair representation only applies to the enforcement of contract-based remedies under the union's exclusive control, and therefore does not apply to actions in "extra-contractual forums," such as the pursuit of a civil lawsuit (*SEIU Local 790 (Hein)* (2004) PERB Decision No. 1677), or enforcement of Education Code violations. (*California Teachers Association (Radford)* (2005) PERB Decision No. 1763.) It is clear that Ms. Grace wanted the Association to represent her regarding the District's alleged non-compliance with Education Code notice and service requirements for non-reelection. Thus, the Association did not violate its duty of fair representation by refusing to pursue action against the District on Ms. Grace's behalf regarding violations of the Education Code. (*Ibid.*) Furthermore, even if the Association's fair representation duty attached to this situation, Ms. Grace's disagreement with the Association's legal conclusion regarding her case is not enough to demonstrate arbitrary, discriminatory, or bad faith conduct by the Association. (*Service Employees International Union, Local 250 (Hessong)* (2004) PERB Decision No. 1693-M

[disagreement with a union's position does not demonstrate a breach of the duty of fair representation; the Board does not assess whether a union's decision was correct, only whether it was devoid of any rational basis or whether it was reached for arbitrary reasons].) Accordingly, the charge does not state a prima facie case and must be dismissed.

Right to Appeal

Pursuant to PERB Regulations,² Charging Party 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, § 32635, subd. (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 during a regular PERB business day. (Cal. Code Regs, tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of PERB 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. (Cal. Code Regs, tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(916) 322-8231
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. (Cal. Code Regs, tit. 8, § 32635, subd. (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, § 32140 for the required contents.) The document will be considered properly "served" when personally delivered or

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

deposited in the mail or deposited with a delivery service and properly addressed. A document may also be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs, tit. 8, § 32135, subd. (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. (Cal. Code Regs, tit. 8, § 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,

M. SUZANNE MURPHY
General Counsel

By _____
Valerie Pike Racho
Regional Attorney

Attachment

cc: Robert E. Lindquist, Attorney

PUBLIC EMPLOYMENT RELATIONS BOARD



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Fax: (818) 551-2820



August 11, 2011

Del M. Grace

Re: *Del M. Grace v. Beaumont Teachers Association/CTA*
Unfair Practice Charge No. LA-CO-1410-E
WARNING LETTER

Dear Ms. Grace:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 31, 2009. Del M. Grace (Ms. Grace or Charging Party) alleges that the Beaumont Teachers Association/CTA (Association or Respondent) violated the Educational Employment Relations Act (EERA or Act)¹ by failing to represent her when she was non-reelected from employment. Investigation of the charge revealed the following relevant information.²

Facts as Alleged

Ms. Grace was employed as a probationary Nurse Practitioner in the Beaumont Unified School District (District) until June 3, 2009,³ when she was non-reelected for the 2009-2010 school year due to a reduction in force. Ms. Grace was included in a bargaining unit exclusively represented by the Association. Ms. Grace asserts that she was not provided a timely, personally served notice of non-reelection by the District, and was also not afforded due process hearing rights. At some point, Ms. Grace enlisted the help of the Association and was referred to Attorney Ronald Skipper.

On August 14, Mr. Skipper informed Ms. Grace in writing that the Association declined to pursue any action against the District on her behalf. The letter stated in relevant part:

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

² The Association filed a position statement in response to the charge on January 28, 2010. A Board agent is permitted to consider undisputed facts supplied by a respondent during charge investigation. (*Service Employees International Union #790 (Adza)* (2004) PERB Decision No. 1632-M.)

³ All dates herein refer to 2009 unless otherwise stated.

This will confirm that I have concluded my research on your case. I understand that your position is that the failure of the [District] to serve you personally with the Notice of Non-Reelection... should "trigger" the application of the Hoschler case,^[4] compelling your retention as an employee of the District. Unfortunately, the facts establish that you authorized the District administration to serve you by mail. The e-mails I obtained confirmed that finding.

Indeed, the District served the Notice upon you by mail prior to the statutory cut-off date. I believe, with the concurrence of the California Teachers Association's Legal Counsel that we would be estopped from successfully raising the holding in the Hoschler case.

On December 22, Ms. Grace sent Mr. Skipper a letter requesting clarification of his reasoning not to pursue her case, but did not receive any reply.

Ms. Grace argues that the Association had an obligation to provide her with legal fees and/or legal representation, and failed to do so.

The above-discussed facts do not demonstrate a prima facie violation of EERA for the reasons discussed below.

Discussion

Although not specifically plead in the charge, the facts presented are most logically analyzed as alleging a breach of the Association's duty of fair representation. 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.]

⁴ Attached as an exhibit to the charge is an advisory legal opinion by the California Teachers Association stating that an appellate court in *Hoschler v. Sacramento City USD* (citation not provided) held that non-reelection notices must be personally served (rather than served by mail) on probationary employees. This advisory opinion also stated that this rule does not apply to RIF (Reduction in Force) notices, which are allowed to be served by mail.

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.

(*Id.* at Proposed Decision, p. 8.)

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.

(*Reed District Teachers Association, CTA/NEA (Reyes)* (1983) PERB Decision No. 332, p. 9, quoting *Rocklin Teachers Professional Association (Romero)* (1980) PERB Decision No. 124; emphasis in original.)

The duty of fair representation only applies to the enforcement of contract-based remedies under a union's exclusive control, and therefore does not apply to actions in "extra-contractual forums," such as pursuing a lawsuit in civil court (*SEIU Local 790 (Hein)* (2004) PERB Decision No. 1677), or enforcing provisions of the Education Code. (*California Teachers Association (Radford)* (2005) PERB Decision No. 1763.) A union has no obligation to provide an employee with legal counsel or to assist an employee with legal fees. (*SEIU Local 1021 (DeLarge)* (2009) PERB Decision No. 2068.)

Pursuant to the PERB case law cited above, the Association had no duty to provide Ms. Grace with legal representation or assistance with legal fees, and did not breach its duty of fair representation by refusing to pursue any action against the District for alleged violation of non-reelection notice requirements under the Education Code. Furthermore, even if it was found that the duty of fair representation applied to this situation, nothing in the Association's conduct can be deemed arbitrary, discriminatory, or in bad faith, because the Association provided Ms. Grace with its rationale for refusing to pursue action against the District. The duty of fair representation does not contemplate or require the complete satisfaction of all represented employees. (*California School Employees Association & its Chapter 374 (Wyman)* (2007) PERB Decision No. 1903.) As it cannot be established that the Association acted without a rational basis, or that the Association had an affirmative duty to represent Ms. Grace regarding her non-reelection, no breach of the duty of fair representation is demonstrated under these facts. Accordingly, the charge must be dismissed.

For these reasons the charge, as presently written, does not state a prima facie case.⁵ If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, Charging Party may 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 an authorized agent of 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 an amended charge or withdrawal is not filed on or before August 18, 2011,⁶ PERB will dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Valerie Pike Racho
Regional Attorney

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⁵ In *Eastside Union School District* (1984) PERB Decision No. 466, the Board explained that a prima facie case is established where the Board agent is able to make "a determination that the facts as alleged in the charge state a legal cause of action and that the charging party is capable of providing admissible evidence in support of the allegations. Consequently, where the investigation results in receipt of conflicting allegations of fact or contrary theories of law, fair proceedings, if not due process, demand that a complaint be issued and the matter be sent to formal hearing." (*Ibid.*)

⁶ A document is "filed" on the date the document is **actually received** by PERB, including if transmitted via facsimile. (PERB Regulation 32135.)