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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

MARTHA JO PETERS,

Plaintiff and Appellant,

v.

SERVICE EMPLOYEES  
INTERNATIONAL UNION, LOCAL  
1000 et al.,

Defendants and Respondents.

E056428

(Super.Ct.No. RIC10022488)

OPINION

APPEAL from the Superior Court of Riverside County. Sharon J. Waters, Judge.

Affirmed.

Martha Jo Peters, in pro. per., for Plaintiff and Appellant.

J. Felix De La Torre, Anne M. Giese and York J. Chang for Defendants and Respondents Service Employees International Union, Local 1000 and Connie Louis.

Plaintiff and appellant Martha Jo Peters sued defendants and respondents Service Employees International Union, Local 1000 (Local 1000) and union representative

Connie Louis (collectively, defendants) for breach of the duty of fair representation.<sup>1</sup>

The trial court granted defendants' demurrer to Peters's second amended complaint without leave to amend. Peters appeals.

## I. PROCEDURAL BACKGROUND AND FACTS

Peters was born in 1946. On June 15, 2009, she became employed with the Employment Development Department (EDD) as an employment program representative. Local 1000 is the collective bargaining labor organization responsible for representing EDD employees, including employment program representatives for EDD. During her probationary period, Peters was rejected for continued employment. EDD's September 3, 2009, "Request for Rejection During Probation" notice cited the following reasons for termination: (1) "Inexcusable Neglect of Duty: conducting personal business during working hours"; (2) "Failure of Good Behavior Either During or Outside of Duty Hours which is such a Nature that it Causes Discredit to the Department of the State Employment"; (3) "Discourteous Treatment of the Public or Other Employees"; (4) "Insubordination: Yelling at a Supervisor"; (5) "Insubordination: Refusing to Follow a Supervisor's Instructions"; and (6) "Unlawful Discrimination . . . against the public or other employees while acting in the capacity of a State employee."

On September 10, 2009, Peters notified Marco Palma of Local 1000 that she had contacted the Fair Employment and Housing Department with the intent of filing a

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<sup>1</sup> Peters sued several defendants alleging several causes of action; however, this appeal concerns only Local 1000 and claims against it.

discrimination claim. Local 1000 represented Peters in her “*Skelly*<sup>2</sup> hearing” regarding the rejection notice, arguing that it was unjust and amounted to EDD ““making a mountain out of a molehill.”” Local 1000 further argued that the rejection “lack[ed] specificity, [was] unnecessary and blown totally out of proportion,” was issued “without properly notifying or coaching the employee,” and should be “revoked.” However, on December 3, 2009, the hearing officer did not find “sufficient reasons or mitigating circumstances” which would support a rescission of or modification to EDD’s action.

Peters initially proceeded with the State Personnel Board appeal, electing to end her representation by Local 1000 in favor of representation by a private attorney. She then elected to drop the appeal process and sought and obtained a right to sue letter. She initiated this action on November 22, 2010. Her second amended complaint, filed on June 27, 2011, alleged causes of action for age discrimination, fraud, defamation, false imprisonment, intentional and negligent infliction of emotional distress, retaliatory termination, and wrongful termination, against several defendants. As to defendants in this appeal, she alleged breach of the duty of fair representation.<sup>3</sup> On March 12, 2012, defendants demurred on the grounds that the trial court lacked jurisdiction and Peters failed to exhaust her administrative remedies. The trial court agreed and dismissed defendants with prejudice.

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<sup>2</sup> *Skelly v. State Personnel Board*. (1975) 15 Cal.3d 194 (*Skelly*).

<sup>3</sup> While she labeled this claim one for breach of contract, it is clearly a claim for breach of the duty of fair representation as unfair practice.

On appeal, Peters challenges the trial court’s ruling. Despite submitting a 42-page opening brief and a 12-page reply brief, she has offered no legal authority in support of her challenge. “To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. [Citations.] When a point is asserted without argument and authority for the proposition, ‘it is deemed to be without foundation and requires no discussion by the reviewing court.’ [Citations.]” (*In re S.C.* (2006) 138 Cal.App.4th 396, 408.) Peters’s legally unsupported and conclusory argument fails to properly tender the issue for review. In any case, her argument has no merit.

## II. STANDARD OF REVIEW

“On appeal, we review the trial court’s sustaining of a demurrer without leave to amend de novo, exercising our independent judgment as to whether a cause of action has been stated as a matter of law. [Citations.] We assume the truth of properly pleaded allegations in the complaint and give the complaint a reasonable interpretation, reading it as a whole and with all its parts in their context. [Citations.] However, we may disregard allegations which are contrary to law or to a fact of which judicial notice may be taken. [Citations.] [¶] We apply the abuse of discretion standard in reviewing the trial court’s denial of leave to amend. [Citations.] When a demurrer is sustained without leave to amend, we determine whether there is a reasonable probability that the defect can be cured by amendment. [Citation.] The appellant bears the burden of proving the trial court erred in sustaining the demurrer or abused its discretion in denying leave to amend.

[Citations.]” (*V.C. v. Los Angeles Unified School Dist.* (2006) 139 Cal.App.4th 499, 506-507.)

### III. DISCUSSION

#### **A. Breach of Duty of Fair Representation as Unfair Practice**

In her second amended complaint, Peters claimed that, inter alia, Local 1000 improperly represented her in her *Skelly* hearing by failing to call witnesses and introduce evidence. The trial court granted Local 1000’s demurrer without leave to amend on the ground that exclusive initial jurisdiction was vested with the Public Employment Relations Board (PERB).<sup>4</sup>

On appeal, Peters does not deny that her action is subject to the exclusive initial jurisdiction of PERB. Rather, she merely claims ignorance of “the PERB or the Dills Act or any other bureaucracy involved in employment with the EDD.” She argues that Local 1000 failed to timely respond to her requests for help, failed to observe informal or formal grievance procedures, and failed to adequately represent her at her *Skelly* hearing.

As an employee of EDD, Peters was covered by the contract between Local 1000 and the State of California. In California, labor relations between the State of California, certain state employees, and employee organizations are governed by the State Employer-Employee Relations Act (the Dills Act) (Gov. Code, § 3512 et seq.). The administrative

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<sup>4</sup> We note that Peters also challenges the judgment following demurrer in favor of defendants other than Local 1000. As we stated in our order dated January 11, 2013 (along with our orders dated October 19, 2012, and September 24, 2012), “this court has no jurisdiction to hear an appeal from judgments entered on September 13, 2011, and October 21, 2011.” Our review is limited to the trial court’s dismissal of Local 1000 with prejudice.

agency authorized to adjudicate unfair labor practices charges arising under the Dills Act is PERB. (Gov. Code, § 3514.5.) In fact, “[t]he initial determination as to whether the charges of unfair practices are justified, and if so, what remedy is necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of [PERB].” (Gov. Code, § 3514.5.) Courts have consistently agreed that PERB has exclusive initial jurisdiction to make such determination. Furthermore, the scope of PERB’s exclusive initial jurisdiction is construed broadly in favor of allowing PERB to exercise its expertise over public sector labor relations in the state. (*City of San Jose v. Operating Engineers Local Union No. 3* (2010) 49 Cal.4th 597, 605-606; *El Rancho Unified School Dist. v. National Education Assn.* (1983) 33 Ca.3d 946, 960-961; *International Assn. of Firefighters, Local 230 v. City of San Jose* (2011) 195 Cal.App.4th 1179, 12207-1209.)

The breach of a union’s duty of fair representation is an unfair labor practice for purposes of Government Code section 3515.7, subdivision (g). Because the essence of Peters’s claim against Local 1000 is that it failed to properly represent her in her *Skelly* hearing and in relation to her rejection on probation, her claim is for breach of the duty of fair representation. As such, PERB has exclusive initial jurisdiction.

#### **B. Exhaustion of Administrative Remedies Before PERB**

“In general, a party must exhaust its administrative remedies before resorting to the courts. [Citation.] Under this rule, an administrative remedy is exhausted only upon termination of all available, nonduplicative administrative review procedures.

[Citation.]” (*City and County of San Francisco v. International Union of Operating*

*Engineers, Local 39* (2007) 151 Cal.App.4th 938, 947.) Here, Peters elected to have a private attorney represent her before the State Personnel Board, and then she elected to bring this lawsuit rather than proceed with PERB's administrative process. Thus, she failed to exhaust her administrative remedies with PERB prior to seeking relief from the courts. While the exhaustion of administrative remedies requirement is subject to certain exceptions, such as when the administrative remedy is not adequate or seeking the administrative remedy is futile (*Paulsen v. Local No. 856 of Internat. Brotherhood of Teamsters* (2011) 193 Cal.App.4th 823, 829), Peters has not argued that any exception applies, and our review of the record has not revealed any applicable exception.

### **C. Order Setting Aside Local 1000's Default Judgment**

Peters faults the trial court for setting aside a default judgment against Local 1000. However, in addition to failing to offer any citation to the record or legal authority, she has failed to provide this court with a record of the proceedings for our review. A fundamental rule of appellate review is that an appealed judgment is presumed correct. "All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. . . ." (*Denham v. Superior Court of Los Angeles County* (1970) 2 Cal.3d 557, 564 (*Denham*)). To overcome this presumption, the appellant must provide an adequate appellate record demonstrating error. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296.) If the record is inadequate, we affirm the appealed judgment. (*Estrada v. Ramirez* (1999) 71 Cal.App.4th 618, 620, fn. 1 [burden is on appellant to provide adequate record on appeal to demonstrate error; failure to do so "precludes an adequate review and results in affirmance of the trial

court's determination"].) Because of the inadequacy of the record, we must presume the trial court's decision to set aside the default judgment was correct and affirm it on that basis. (*Denham, supra*, at p. 564.)

#### IV. DISPOSITION

The judgment is affirmed. Defendants and respondents are awarded costs on appeal.

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HOLLENHORST

Acting P. J.

We concur:

MCKINSTER

J.

CODRINGTON

J.