STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

FREDERICK L. MICKLE, Charging Party,	)	Case No. LA-CE-3679
v.	)	PERB Decision No. 1167
VENTURA COUNTY COMMUNITY COLLEGE DISTRICT, Respondent.	)	September 11, 1996

Appearances: England, Whitfield, Schroeder & Tredway, LLP by Robert A. McSorley, Attorney, for Frederick L. Mickle; Epstein, Becker & Green by Jana L. De Meire, Attorney, for Ventura County Community College District.

Before Caffrey, Chairman; Garcia and Dyer, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (Board) on appeal from a Board agent's dismissal (attached) of Frederick L. Mickle's (Mickle) unfair practice charge. The charge alleged that the Ventura County Community College District (District) violated section 3543.5(a), (b), (c), (d) and (e) of the Educational Employment Relations Act (EERA)[1]

[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. EERA section 3543.5 provides:

> It shall be unlawful for a public school employer to do any of the following:
>
> (a) 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. For purposes of this subdivision, "employee" includes an

when it complied with a collective bargaining agreement provision which gave promotional candidates a hiring preference over other applicants for employment.[2]

The Board has reviewed the entire record in this case, including Mickle's unfair practice charge, the warning and dismissal letters, Mickle's appeal, and the District's response thereto. The Board finds the Board agent's warning and dismissal letters to be free from prejudicial error and hereby adopts them as the decision of the Board itself.

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applicant for employment or reemployment.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

(e) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

[2]Mickle also claims that the District violated EERA section 3543.6. Because that section applies only to employee organizations, we do not rule on that allegation. In addition, Mickle claims that the District violated Government Code section 12921; Education Code sections 87100, 88091, 88115; 42 United States Code section 2000(d) and (e). Absent an independent violation of the EERA, the Board has no jurisdiction over those statutes in this case. For that reason, this decision does not address those statutes.

ORDER

The unfair practice charge in Case No. LA-CE-3679 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Garcia joined in this Decision.

STATE OF CALIFORNIA PETE WILSON, *Governor*

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
3530 Wilshire Blvd.. Suite 650
Los Angeles, CA 90010-2334
(213) 736-3127

June 25, 1996

Robert A. McSorley
England, Whitfield Schroeder & Tredway
3 00 Esplanade Drive, Sixth Floor
Oxnard, California 93030-1251

Re: Unfair Practice Charge No. LA-CE-3679,
Frederick L. Mickle, Jr. v. Ventura County Community College District
DISMISSAL AND REFUSAL TO ISSUE A COMPLAINT

Dear Mr. McSorley:

Frederick L. Mickle, Jr. filed the above-referenced unfair practice charge alleging the Ventura County Community College District (District) violated the Educational Employment Relations Act (EERA or Act) §3543.5 by refusing to hire him as a permanent employee.

I indicated to you, in my attached letter dated June 12, 1996, 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 21, 199 6, the charge would be dismissed.

I have not received either an amended charge or a request for withdrawal. Therefore, I am dismissing the charge based on the facts and reasons contained in my June 12, 1996 letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, 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. (Cal. Code of Regs., tit. 8, sec. 32635(a).) To be timely filed, the original and five copies of such appeal must be actually received by the Board itself

before the close of business (5 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. (Cal. Code of Regs., tit. 8, sec. 32135.) Code of Civil Procedure section 1013 shall apply. The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

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 of Regs., tit. 8, sec. 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 Cal. Code of Regs., tit. 8, sec. 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.

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 of Regs., tit. 8, sec. 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
Deputy General Counsel

By
Tammy L. Samsel
Regional Attorney

Attachment

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
3S30 Wilshire Blvd., Suite 650
Los Angeles, CA 90010-2334
(213) 736-3127

June 12, 1996

Robert A. McSorley
England, Whitfield Schroeder & Tredway
300 Esplanade Drive, Sixth Floor
Oxnard, California 93030-1251

Re: Unfair Practice Charge No. LA-CE-3679,
Frederick L. Mickle, Jr. v. Ventura County Community College District
WARNING LETTER

Dear Mr. McSorley:

Frederick L. Mickle, Jr. filed the above-referenced unfair practice charge alleging the Ventura County Community College District (District) violated the Educational Employment Relations Act (EERA or Act) §3543.5 by refusing to hire him as a permanent employee.

On October 19, 1995, the District appointed Mickle to a temporary position as the Student Activities Specialist II. On January 11, 1996, the District informed Mickle he would not be considered for the permanent position as the Student Activities Specialist II. The District contended its collective bargaining agreement (CBA) with the Service Employees International Union, Local 535, (SEIU) required the District to offer the position to all permanent personnel first, before considering outside applicants. Section 14.7 of the parties' CBA provides:

> The District Personnel Office shall maintain eligibility lists for certification for vacant positions based upon the results of open and promotional examinations. The promotional candidates passing the examination shall be placed at the top of the eligibility list and all open candidates shall follow in rank order.

Charging Party alleges the CBA is "inapplicable to his employment application . . . ." Charging Party "requests that the Board order the employer and the Union to consider and determine in good faith his application for permanent employment as Student Activities Specialist II . . . ."

PERB regulation 32615(a)(5) states a charge shall contain a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." A charging party should allege the "who, what, when, where, and how" of an unfair practice. (United Teachers-Los Angeles (Ragsdale) (1992) PERB Decision No. 944.) Mere legal conclusions are insufficient. (See State of California (Department of Food and Agriculture (1994) PERB Decision No. 1071-S.) On May 29, 1996, I contacted you and indicated the charge did not appear to state a prima facie violation of the EERA. You indicated that you did not wish to withdraw the charge. The charge does not allege which particular subsection of EERA § 3543.5 the District has allegedly violated, and it remains unclear from the charge how the District violated the EERA.[1]

The legal theory of the charge seems to indicate Section 14.7 of the parties' contract is illegal as applied to Mickle. Section 14.7 is the result of the collective bargaining process between the District and SEIU, and is applicable to promotional opportunities in the unit, including the Student Activities Specialist II position for which Mickle applied. The negotiation of seniority protection in a promotional system has been considered a mandatory subject of bargaining under the EERA. (See San Mateo School District (1984) PERB Decision No. 375.) Thus it does not appear the negotiation or application of such a provision is, on its face, illegal. Accordingly, it does not appear the District violated EERA when processing Mickle's application pursuant to Section 14.7.

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 which 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 be served on the respondent and the original

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[1]There was no indication from the charge that the District retaliated against Mickle. In fact, the charge indicated the District refused to hire Mickle solely because the CBA gave first preference to promotional candidates. However even if the charge were read to include a discrimination theory, the charge failed to meet the appropriate standard as set forth in Novato Unified School District (1982) PERB Decision No. 210.

proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before June 21. 1996. I shall dismiss your charge. If you have any questions, please call me at (213) 736-7508.

Sincerely,

Tammy L. Samsel
Regional Attorney