

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



VICTOR WIGHTMAN,)
)
Charging Party,) Case No. LA-CE-1770
)
v.) PERB Decision No. 412
)
LOS ANGELES UNIFIED SCHOOL DISTRICT,) October 4, 1984
)
Respondent.)
_____)

Appearances; Victor Wightman and Jules Kimmett for Charging Party; O'Melveny & Myers by Gordon E. Krischer and Joel M. Grossman, for Respondent.

Before Hesse, Chairperson; Tovar and Morgenstern, Members.

DECISION

HESSE, Chairperson: This case is before the Public Employment Relations Board (PERB or Board) on Charging Party's appeal of the regional attorney's dismissal of an unfair practice charge against Los Angeles Unified School District (LAUSD).

In his charge, Wightman alleges that four LAUSD employees conspired to have him terminated from employment with the LAUSD. He further alleges that the four employees succeeded in having him removed on April 19, 1983 through "callous, unethical, immoral, unjust, unprincipled, and most significantly ILLEGAL means." (Emphasis in the original.) Charging Party alleges that the above-related conspiracy was violative of Educational Employment Relations Act (EERA),

subsections 3543.5(a), (b), (c), and (d)1 and "Federal Criminal Code sections 241 and 242."

The regional attorney dismissed the charge of EERA violations for failure to state a prima facie case. He noted, furthermore, that PERB does not have jurisdiction to find a violation of the Federal Criminal Code. We affirm his dismissal for the reasons set forth below.

Charging Party has alleged only one thing: that four employees conspired to have him terminated, succeeding in that goal on April 19, 1983. No other facts are alleged. Standing

¹EERA is codified at Government Code section 3540 et seq. Section 3543.5 reads in pertinent part as follows:

It shall be unlawful for a public school employer to:

(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.

(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.

All statutory references herein are to the Government Code unless noted otherwise.

alone, this allegation does not contain "[a] clear and concise statement of the facts and conduct alleged to constitute an unfair practice." PERB Regulation 32615.2

EERA subsection 3543.5(a) protects employees from, among other things, discrimination or reprisal because of their exercise of rights protected by the Act. In order to support a charge asserting such a violation, Charging Party must allege that he was engaged in a protected activity, that the employer was aware of that activity, and that the employer threatened to impose, or imposed, reprisals or discrimination against the employee because of the employee's exercise of protected rights. See Novato Unified School District (4/30/82) PERB Decision No. 210. Here, the allegation made falls short on all three counts: we are not told what guaranteed rights were exercised by the Charging Party; we are not told that the employer knew of any protected activity by Wightman; finally, we are not told that the employer acted in response to the exercise of any protected right.

In his appeal to the Board, entitled "The Big 4 Conspiracy," Charging Party references his appeal to the Board of another unfair practice charge dismissal.³ He then makes the only statement relevant to this case:

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

³Unfair Practice Case No. LA-CE-1765.

There is not a shred of original analysis to negate this charge; that four transportation bureaucrats conspired to fire Victor Wightman for his practice of protected rights under the EERA. (Emphasis in the original.)

Despite this statement that Charging Party was engaged in the practice of protected rights, we are given no facts to support this allegation. This bare assertion in an appeal is too little, too late and is not grounds to overturn the dismissal. The allegation of a violation of section 3543.5(a) is dismissed.

The further allegations of violations of section 3543.5(b), (c), and (d) are also dismissed because Charging Party did not allege any facts which, if proven, would constitute a violation of EERA. The bare charge of a conspiracy, unsupported by any factor other than that Wightman was fired, is not enough to establish a prima facie case of a violation of section 3543.5(b), (c), or (d). The regional attorney's dismissal as to these elements of the charge is also sustained.

ORDER

The appeal by Charging Party of the regional attorney's dismissal of this charge is DENIED. Accordingly, charge number LA-CE-1770 is hereby dismissed without leave to amend.

Members Tovar and Morgenstern joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Headquarters Office
1031 18th Street
Sacramento, California 95814
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June 29, 1983

Joel M. Grossman, Atty.
O'Melveny & Myers
1800 Century Park East, Suite 600
Los Angeles, CA 90067

Jules Kimmett

RE: REFUSAL TO ISSUE COMPLAINT AND DISMISSAL OF UNFAIR
PRACTICE CHARGE; Victor Wightman v. Los Angeles USD,
Charge No. LA-CE-1770

Dear Parties:

Pursuant to Public Employment Relations Board (PERB) regulation section 32730, a complaint will not be issued in the above-referenced case and the pending charge is hereby dismissed because it fails to allege facts sufficient to state a prima facie violation of the Educational Employment Relations Act (EERA).¹ The reasoning which underlies this decision follows.

On April 25, 1983, Mr. Wightman filed an unfair practice charge against the Los Angeles Unified School District (District) which alleged violations of sections 3543.5(a), (b), (c), and (d). In addition, he alleged violations of "Federal Criminal Code - Sections 241 and 242."

More specifically, Mr. Wightman alleged that Max Barney, Ralph Jacobs, Bill Hamm and William Srott have conspired to have him terminated from employment.¹ References to the EERA are to Government Code sections 3540 et seq. PERB regulations are codified at California Administrative Code, Title 8.

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This agency does not have jurisdiction to find a violation of the Federal Criminal Code. Instead, it is limited to enforcement of certain provisions of the EERA. Specifically, section 3543 grants public school employees the right to:

form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations.

For the reasons set forth below, charge number LA-CE-1770, as presently written, does not state a prima facie case.

First, Mr. Wightman has alleged that the Respondent's conduct has violated EERA sections 3543.5(a). Violation of that section requires allegations that: (1) an employee has exercised rights under the EERA; (2) the employer has imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained, or coerced employees because of their exercise of rights guaranteed by the EERA. Carlsbad Unified School District (1/30/79) PERB Decision No. 89; Novato Unified School District (4/30/82) PERB Decision No. 210.

Mr. Wightman has not presented any facts in this charge, nor were any discovered during the investigation, which indicate that the District was acting because of Mr. Wightman's exercise of rights guaranteed by the EERA. Thus, the charge does not state a prima facie violation of EERA section 3543.5 (a).

Second, to state a prima facie violation of EERA section 3543.5(b) requires a showing that the employer has denied to an employee organization its rights guaranteed to it under the EERA. There are no facts which demonstrate that the District has denied an employee organization any rights guaranteed by the EERA. Thus, no prima facie violation of EERA section 3543.5(b) is presented by this charge.

Third, in determining whether a party has violated section 3543.5 (c) of EERA, the Public Employment Relations Board (PERB) utilizes either the "per se" or the "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. Stockton USD (11/3/80) PERB Decision No. 143. There are no facts alleged or discovered during the investigation which indicate that the

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District has violated its duty to bargain in good faith under either the "totality of conduct" or the "per se" test. Thus, there is no prima facie violation of EERA section 3543.5(c).

Fourth, violation of section 3543.5(d) requires a showing that the employer has dominated or interfered with the formation or administration of an employee organization, contributed financial or other support to it, or encouraged employees to join one organization in preference to another. There are no allegations in the charge nor were facts discovered during the investigation which demonstrate that the District has engaged in such conduct. Thus, there is no prima facie violation of EERA section 3543.5(d).

Pursuant to Public Employment Relations Board regulation section 32635 (California Administrative Code, title 8, part III), you may appeal the refusal to issue a complaint (dismissal) to the Board itself.

Right to Appeal

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 (section 32635(a)). To be timely filed, the original and five (5) copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) on July 20, 1983, or sent by telegraph or certified United States mail postmarked not later than July 20, 1983 (section 32135). 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 (5) copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal (section 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 the document filed with the Board itself (see section 32140 for the required contents and a

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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 (section 32132).

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Very truly yours,

DENNIS M. SULLIVAN
General Counsel

By _____
Robert Kingsley •
Attorney

cc: Victor Wightman