

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



VICTOR WIGHTMAN,)
)
 Charging Party,) Case No. LA-CE-1775
)
 v.) PERB Decision No. 426
)
 LOS ANGELES UNIFIED SCHOOL DISTRICT,) October 26, 1984
)
 Respondent.)
 _____)

Appearances: Victor Wightman and Jules Kimmett for Charging Party; O'Melveny & Myers by Gordon E. Krischer and Joel M. Grossman for Los Angeles Unified School District. Before Hesse, Chairperson; Tovar and Morgenstern, Members.

DECISION

HESSE, Chairperson: This case is before the Public Employment Relations Board (PERB) on Charging Party's appeal of the regional attorney's dismissal of charges alleging that the Los Angeles Unified School District (LAUSD)¹ violated the Educational Employment Relations Act (EERA) and certain federal statutes.

Specifically, Charging Party alleges violations of EERA subsections 3543.5(a), (b), (c) and (d),² as well as "Federal

¹EERA is codified at Government Code section 3540 et seq. All statutory references are to the Government Code unless noted otherwise.

²Section 3543.5 reads in pertinent part as follows:

Criminal (conspiracy) Code - Sections 241 and 242." The allegations are based on Charging Party's statement of conduct entitled "Incompetence of Harry Handler - Superintendent." The conduct alleged in the charge is that Handler, Superintendent of LAUSD, was aware of "administrative mishandling of the case to terminate [Wightman]." This knowledge was gained through a letter sent by the Charging Party to Handler on April 20, 1983 (attached to the charge), which detailed that grievant had not received a Skelly³ hearing as of that day, the day after his termination.

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.

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³In Skelly v. State Personnel Board (1975) 15 Cal.3d 194, the Supreme Court held that prior to taking punitive action against a permanent civil service employee, the State is

The charge also alleged that Handler was aware of "harassments and vindictive attitude toward Victor Wightman - including the firing of a co-worker associated to Victor by his attendance at Victor's April 1982 reinstatement hearing."

Finally, the charge alleges that Handler "has done nothing" despite Wightman's dismissal on April 19, 1983.

In his dismissal letter, the regional attorney noted that PERB had no authority to find a violation of the Federal Criminal Code or to remedy the denial of a "Skelly" hearing unless the latter was also an independent violation of EERA. In support of this finding, the regional attorney specifically referred to the prima facie test for each subsection of section 3543.5, and found that Charging Party had not presented any facts which, if true, would show a violation of any subsection of section 3543.5.

In his appeal, Wightman argues that the superintendent is ultimately "responsible for the workings of his subordinates." Since, according to Charging Party's appeal, Handler was aware that Wightman was engaged in protected activities, and since the superintendent did nothing to halt the denial of Charging Party's EERA rights, Handler is guilty of "conspiring" with other officials who denied Wightman a Skelly hearing.

required to provide, as minimum preremoval safeguards, a notice of the proposed action, the reasons therefor, a copy of the charges and materials on which the action is based, and the right to respond, either orally or in writing, to the authority initially imposing discipline.

We reject the appeal because the charge, as written, contains no facts that, if true, would constitute a violation of EERA. The superintendent is charged with "incompetence" and inaction. These allegations, unsupported by any factual allegations, are not potential violations of EERA.

The fact that Wightman was terminated prior to a Skelly hearing being held is not a violation of EERA, unless that action was prompted by Charging Party's protected activity. Mere knowledge by Handler of protected activity by Wightman is not enough to impute an improper motive to the employer's actions. Novato Unified School District (4/30/82) PERB Decision No. 210.

Where it is alleged that the employer has taken reprisals against an employee for participation in protected activity, the charging party must show: (1) that he had engaged in protected activity; (2) the employer had actual or imputed knowledge of the protected activity; and (3) the existence of other factors, such as suspicious timing, disparate treatment or departure from established procedures, which support an inference of unlawful motive. Novato, supra, pp. 6-7.

Here, treating Wightman's allegations in his charge and appeal as true,⁴ Wightman alleges only that he was engaged in

⁴San Juan Unified School District, (3/10/77) EERB Decision No. 12. Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board, or EERB.

protected activities and that Handler had knowledge thereof. Absent an allegation of facts showing that Handler's inaction in response to Wightman's letter constituted disparate treatment as compared to Handler's treatment of other employee letters of complaint, or a departure from his established procedures in dealing with such complaints, no inference of unlawful motive is raised. Consequently, we find no prima facie showing of a 3543.5(a) violation.

We concur with the regional attorney that the facts alleged in the charge also fail to state a prima facie violation of EERA subsections 3543.5(b), (c) or (d). Consequently, the entire charge is dismissed.

ORDER

The appeal by Charging Party of the regional attorney's dismissal is DENIED. Accordingly, charge No. LA-CE-1775 is DISMISSED without leave to amend.

Members Tovar and Morgenstern joined in this Decision.