

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



JAMES E. CALDWELL,)
)
Charging Party,) Case No. LA-CE-1923
)
v.) PERB Decision No. 441
)
LAKE ELSINORE UNION SCHOOL DISTRICT,) November 29, 1984
)
Respondent.)
_____)

Appearance: James E. Caldwell on his own behalf.

Before Jaeger, Morgenstern and Burt, Members.

DECISION

BURT, Member: This case is before the Public Employment Relations Board (Board) on an appeal by James E. Caldwell of the Board agent's dismissal, attached hereto, of his charge alleging that the Lake Elsinore Union School District violated section 3543.5(a) of the Educational Employment Relations Act (Government Code section 3540 et seq.).

We have reviewed the dismissal and, finding it free from prejudicial error, adopt it as the Decision of the Board itself.

ORDER

The unfair practice charge in Case No. LA-CE-1923 is
DISMISSED WITHOUT LEAVE TO AMEND.

Members Jaeger and Morgenstern joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

LOS ANGELES REGIONAL OFFICE
3470 WILSHIRE BLVD., SUITE 1001
LOS ANGELES, CALIFORNIA 90010
(213) 736-3127



April 18, 1984

James Caldwell

James Whitlock
Parham & Associates
2691 Richter Avenue, Suite 132
Irvine, CA 92714

RE: LA-CE-1923, Caldwell v. Lake Elsinore Union
School District, DISMISSAL OF UNFAIR PRACTICE CHARGE

The above charge was filed on February 10, 1984, alleging that the district discriminatorily refused Caldwell's mileage reimbursement claim, and thereafter discriminatorily denied his grievance, pertaining to this refusal because of his union activity as chairman of the teacher's association and because he filed grievances and unfair practice charges against the district within the last six months.

My investigation has revealed the following facts. On about September 8, 1983, James Caldwell filed a demand for mileage reimbursement for travel expenses incurred for attendance at a district in-service meeting. The claim was subsequently denied by the district on September 12, 1983.

On about September 20, 1983, Caldwell and grievance representative Halle Reising presented an oral grievance to the district pursuant to section 15.5 of the current collective bargaining agreement, and alleging a violation of article 23.2 (mileage). Said agreement contains a grievance procedure ending in binding arbitration (Sect. 15.10 et. seq.). The pertinent articles in the contract read:

"12.2. There shall be no discrimination against any employee because of his/her membership in the Association or because of his/her acting as an officer, or in any official capacity on behalf of the Association. . . .

23.2. Mileage - The District shall provide transportation for required travel or reimburse the bargaining unit member at the rate of 23¢ per mile for the 1982-83 school year or the Internal Revenue Service allowance, whichever is greater".

The grievance was denied at the first two levels because the lower level supervisors asserted that they could not resolve the problem at the "building level". When the grievance reached level III, it was denied on the stated grounds that the contract language did not apply to incidental travel, such as going from one school to another for a district meeting, but only applied to unit members who, as a course of their job, are assigned school-to-school, home-teaching, or out-of-district travel.¹

The grievance thereafter reached level IV of the procedure, wherein the parties requested mediation. In support of his position at this level, Caldwell wrote, inter alia, the following:

"I don't recall saying that I was the only one filing a mileage claim. The District alone would know this. I do recall saying that if anyone else had applied there would have been no denial. This comment caused a stunned silence for an extended period of time. I do wonder about the possibility of discrimination".

The parties reached a mediated settlement at this level on November 16, 1983. That document states:

"The Lake Elsinore School District hereby agrees to pay the mileage claim of James Caldwell for business travel on September 7, 1983 (9.2 miles 23¢ per miles [sic]). This Agreement resolves the EVEA [Elsinore Valley Education Association] grievance filed 9/21/83".

The agreement was executed by James Whitlock, District Representative, and Dee Thomas, EVEA President. A check for the mileage was issued to Jim Caldwell on November 30, 1983.

Based upon the foregoing facts, supplied almost entirely by Charging Party, the charge fails to establish a prima facie violation of the EERA. The parties negotiated for, and obtained a grievance procedure in their contract to settle

¹Caldwell's mileage claim was for traveling 9.2 miles of in-district travel.

disputes of mileage reimbursement and allegations of discrimination due to protected activity. The District has followed the procedure and settled the grievance.

Section 3541.5(a) of the Government Code prohibits the PERB from issuing a Complaint "against conduct also prohibited by the provisions of the agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted either by settlement or binding arbitration". However, the Board, pursuant to that section, has discretionary jurisdiction to review a settlement or arbitration award solely for the purpose of determining whether it is repugnant to the purposes of the EERA.

The Charging Party has not filed this charge on the basis that the settlement is repugnant to the Act. If he so intended, he has not met the filing requirements of Board Regulation 32661 (8 Cal. Admin. Code), which requires that he allege with specificity the facts underlying the party's claim that the settlement is repugnant. Instead, Charging Party has stated that the grievance resolved only his mileage claim, but not his claim that the denial of his grievance was discriminatory, causing him to expend time and resources in appealing it.

This position ignores the fact that the grievance procedure itself is the avenue designed by the parties to deal with the method of processing such complaints. The discriminatory conduct of which Charging Party complains is prescribed by the contract's "no discrimination" clause noted above. See Baldwin Park Unified School District (4/4/79) PERB Decision No. 92. The fact that he argued a "possible discrimination" during the grievance procedure indicates that he was aware of a discrimination claim prior to reaching a settlement of the dispute. Yet, he proceeded to settle the claim. Charging Party either failed to raise the discrimination argument properly during his grievance, or he did raise it, and settled the dispute nonetheless on November 16, 1983. In either case, he is estopped from raising an issue that was finally resolved through the parties' negotiated procedure, or that should have been raised during the same. For the above reasons, the charge is hereby dismissed.

Pursuant to Public Employment Relations Board regulation 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 Notice (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 May 8, 1984, or sent by telegraph or certified United States mail postmarked not later than May 8, 1984 (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, any other party may file with the executive assistant to 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 except for amendments to the charge must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany the document filed with the Regional Office or the Board itself (see section 32140 for the required contents and a sample form). The documents 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 executive assistant to the Board at the previously noted address. A request for an extension in which to file a document with the Regional Office should be addressed to the Regional Attorney. A request for an extension must be filed at least three (3) calendar days before the expiration of the time

LA-CE-1923
April 18, 1984
Page 5

required for filing the subject document. The request must indicate good cause for 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 Sullivan
General Counsel

Manuel M. Melgoza
Regional Attorney

MMM:djm

