

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



TONY PETRICH,)
)
 Charging Party,) Case No. LA-CE-2112
)
 v.) PERB Decision No. 510
)
 RIVERSIDE UNIFIED SCHOOL DISTRICT,) June 21, 1985
)
 Respondent.)
)
 _____)

Appearance: Tony Petrich, on his own behalf.

Before Hesse, Chairperson; Jaeger, Morgenstern, Burt and Porter, Members.

DECISION

This case is before the Public Employment Relations Board (Board) on appeal by the Charging Party of the Board agent's partial dismissal, attached hereto, of his charge that the Riverside Unified School District violated section 3543.5(a), (b), (c) and (d) of the Educational Employment Relations Act (Government Code section 3540 et seq.)¹

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

¹On April 2, 1985, the Board's regional attorney issued a complaint in the instant case, finding that certain allegations of the charge established a prima facie violation of Government Code section 3543.5(a) and (b).

ORDER

Charging Party's appeal of the partial dismissal is hereby
DENIED.

By the BOARD

PUBLIC EMPLOYMENT RELATIONS BOARD

SACRAMENTO REGIONAL OFFICE
1031 18TH STREET, SUITE 102
SACRAMENTO, CALIFORNIA 95814
(916) 322-3198



April 2, 1985

Tony Petrich

Re: Tony Petrich v. Riverside Unified School District
Unfair Practice Charge No. LA-CE-2112

Dear Mr. Petrich:

The above-referenced charge alleges that the Riverside Unified School District (District) has discriminated against Mr. Petrich by the following act6:

1. placed a letter in his personnel file on December 7 which denies a request for personal necessity leave and disciplines him for being absent without approval;
2. placed a copy of a letter from the exclusive representative, California School Employees Association, Riverside Chapter No. 506 (Association), in his personnel file on December 10;
3. placed a letter from District Principal Sund in his personnel file on December 10 regarding work keys;
4. placed a letter from District Principal Sund in his personnel file on December 11 regarding his absence from work;
5. reassigned Mr. Petrich on December 14 to work at North High School;
6. placed a letter from District Principal Sund in his personnel file on December 19 regarding his obtaining keys prior to working.

Mr. Petrich
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This conduct is alleged to violate section 3543.5(a) of the Educational Employment Relations Act (EERA).

The above-referenced charge also alleges that the District committed the following unilateral changes:

- A. denied Mr. Petrich due process under the collective bargaining agreement by docking his pay prior to providing him with an opportunity to request a hearing;
- B. changed the time Mr. Petrich was to report to work from 7:00 a.m. to 6:30 a.m. on December 14;
- C. locked Mr. Petrich out of his job on December 19.

This conduct is alleged to violate section 3543.5(a), (b) and (c) of the EERA.

I indicated to you in my letter dated March 21, 1985, that certain allegations contained in the above-referenced charge did not state a prima facie case, and that unless you amended these allegations to state a prima facie case, or withdrew them prior to April 1, 1985, they would be dismissed. More specifically, I informed you that if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge accordingly.

I have not received either a request for withdrawal or an amended charge and am therefore dismissing those allegations which fail to state a prima facie case based on the facts and reasons contained in my March 21 letter which is attached as Exhibit 1.

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 April 22, 1985, or sent by telegraph or certified United States mail

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postmarked not later than April 22. 1985 (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 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 Thompson ,
Regional Attorney

PUBLIC EMPLOYMENT RELATIONS BOARD

SACRAMENTO REGIONAL OFFICE
1031 18TH STREET, SUITE 102
SACRAMENTO, CALIFORNIA 95814
(916) 322-3198



March 21. 1985

Tony Petrich

Re: Tony Petrich v. Riverside Unified School District
Unfair Practice Charge No. LA-CE-2112

Dear Mr. Petrich:

The above-referenced charge alleges that the Riverside Unified School District (District) has discriminated against Mr. Petrich by the following acts:

1. placed a letter in his personnel file on December 7 which denies a request for personal necessity leave and disciplines him for being absent without approval;
2. placed a copy of a letter from the exclusive representative. California School Employees Association. Riverside Chapter No. 506 (Association), in his personnel file on December 10;
3. placed a letter from District Principal Sund in his personnel file on December 10 regarding work keys;
4. placed a letter from District Principal Sund in his personnel file on December 11 regarding his absence from work;
5. reassigned Mr. Petrich on December 14 to work at North High School;
6. placed a letter from District Principal Sund in his personnel file on December 19 regarding his obtaining keys prior to working.

EXHIBIT I

This conduct is alleged to violate section 3543.5(a) of the Educational Employment Relations Act (EERA).

The above-referenced charge also alleges that the District committed the following unilateral changes:

- A. denied Mr. Petrich due process under the collective bargaining agreement by docking his pay prior to providing him with an opportunity to request a hearing;
- B. changed the time Mr. Petrich was to report to work from 7:00 a.m. to 6:30 a.m. on December 14;
- C. locked Mr. Petrich out of his job on December 19.

This conduct is alleged to violate section 3543.5(a). (b) and (c) of the EERA.

My investigation revealed the following facts. Mr. Petrich has had a long history of involvement in personnel issues with the District. In 1982 he filed five grievances pursuant to the collective bargaining agreement between the District and the Association. He received one reprimand in 1983 and four more in 1984. He filed grievances against the District on September 24 and November 13, 1984 as well as an unfair practice charge (LA-CE-2097) on November 27.

The 1982-85 collective bargaining agreement between the District and the Association reads in pertinent part:

4.3 District Obligations:

During the term of this agreement or any extension thereof, the District agrees that it will not lock out its employees.

Section 13.5.2 personal necessity shall include any of the following:

.

(7) personal business of the employee which is serious in nature, including circumstances the employee cannot reasonably disregard, and requires the attention of the employee during assigned work hours. Except for an emergency situation, a request for such leave must, when feasible, be submitted

three (3) workdays in advance of the requested leave date and shall be limited to no more than two (2) of the total leave days available for personal necessity. Except when only one (1) employee makes such a request, no more than five (5) percent of the employees at a worksite may use personal necessity leave in this manner on the same day. Such leave may not be used the first or last five (5) days of each semester, or before or after a scheduled holiday, unless approved by the Personnel Office.

14.5 nothing in this section shall prohibit the Personnel Office from making reasonable temporary reassignments when the employee's salary and benefits are not affected.

Section 19.0

The District may impose discipline or dismissal on permanent employees when the work performance or behavior of the employee is such that prior verbal and/or written warnings by the immediate supervisor have failed to result in a remediation of the unsatisfactory performance or behavior. The District may suspend with pay, suspend without pay, reduce employee's hours, dock pay for absence without authority, or discipline employees in other appropriate manners to correct or remediate any employee's unsatisfactory performance or behavior.

Section 19.1

Right to Request Hearing:

A permanent employee has the right to request an informal hearing with the immediate supervisor prior to disciplinary action and/or dismissal. If requested, such a hearing will be held.

Based on the facts described above. Allegations 1. 2. 5. A. B. and C contained in this charge as described above do not state a prima facie violation of the EERA for the reasons which follow.

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To establish a violation of section 3543.5(a). a charging party must show that (1) an employee has exercised rights under the EERA. (2) the employer had knowledge of the exercise of those rights, and (3) the employer imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained or coerced the employee because of the exercise of those rights. Novato Unified School District (4/30/82) PERB Decision No. 210; Carlsbad Unified School District (1/30/79) PERB Decision No. 89.

Allegation number 1 of this charge does not allege any facts indicating that the District acted against you because of your filing of grievances, unfair practice charges, or other exercise of employee rights. To demonstrate the employer's unlawful motive, charging party must show more than an exercise of EERA protected rights. The timing of the employer's conduct in relation to the protected activity is an important factor, but is not, without more, sufficient to demonstrate a violation of the EERA. Moreland Elementary School District (7/27/82) PERB Decision No. 227. Facts establishing one or more of the following additional factors must also be present: (1) the employer's disparate treatment of other employees. (2) the employer's departure from established procedures and standards when dealing with the alleged discriminatee. (3) the employer's inconsistent or contradictory justifications for its actions. (4) the employer's cursory investigation of the alleged discriminatee's misconduct. (5) the employer's failure to offer the alleged discriminatee justification at the time it took action or the offering of exaggerated, vague, or ambiguous reasons, or (6) any other facts which might demonstrate the employer's lawful motive. Novato Unified School District. supra: North Sacramento School District (12/20/82) PERB Decision No. 264.

Although the December 7th denial of personal necessity leave resulted from Mr. Petrich taking a day off to file an unfair practice charge, charging party has failed to establish a nexus between protected activity and the employer's action. There is a protected right to file an unfair practice charge, however, this does not mean that an employee has the right to unilaterally decide to miss work in order to file such a charge. In addition, charging party has not offered any facts which show that the District denied the personal necessity leave because of any previous exercise of protected rights. Absent factual allegations which demonstrate that the District took its action because of Mr. Petrich's protected conduct, allegation one will be dismissed.

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The allegations in paragraph two and five will be dismissed because charging party has failed to show that the allegations reflect adverse actions. The placing of an Association letter to the District concerning Mr. Petrich in Mr. Petrich's file does not adversely affect his employment with the District. The letter stated the Association's concern over recent District actions against Mr. Petrich. These actions had been previously documented in District letters dated November 7 and 14 to Mr. Petrich, copies of which had already been placed in his personnel file. The placement of this letter in the file has the same effect on Mr. Petrich as does the placement of his rebuttal letters in the same file.

With respect to the job reassignment, charging party has not demonstrated how this was adverse to his employment. The work hours, customary duties and commuting distance for the new job are essentially identical to the old. Thus this allegation of reprisal must be dismissed.

In determining whether a party has violated section 3543.5(c) of EERA, the 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 Unified School District (11/2/80) PERB Decision No. 143. Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer has implemented a change in policy concerning a matter within the scope of representation. (2) the change is implemented prior to the employer notifying the exclusive representative and giving it an opportunity to request negotiations. Walnut Valley Unified School District (3/30/81) PERB Decision No. 160. Grant Joint Union High School District (2/26/82) PERB Decision No. 196.

With respect to allegation A. that the District unilaterally denied Mr. Petrich due process under the collective bargaining agreement, the facts indicate that Mr. Petrich was given an opportunity to request a hearing prior to the docking. More specifically, the December 7, 1984 letter from Assistant Superintendent Tucker to Mr. Petrich (attached as an exhibit to the unfair practice charge) states:

Given the evidence you have provided. I must conclude that you were absent without leave for the second time in the month of November. Your pay for December will be reduced by one day's salary, unless you can

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provide evidence that the reason for your absence and your late request for leave on November 27. 1984 were within the provisions of 13.5.2 (7) of the RUSD-CSEA Agreement. (enpha6i6 added.)

By this letter Mr. Tucker provided Mr. Petrich with an opportunity to provide evidence and/or request a hearing prior to the actual docking of pay. ThU6. no unilateral modification of section 19.1 of the collective bargaining agreement has been demonstrated.

With respect to allegation B. the December 14 reassignment, charging party has failed to show any change took place. Mr. Petrich was reassigned to a new school in compliance with the requirements of section 14.5 of the collective bargaining agreement. Although not specified in Mr. Tucker's correspondence, charging party argues that the District ordered his workday to begin at 6:30 as opposed to his normal starting time of 7:00 a.m. However, the 6:30 a.m. starting time was rescinded on the first day of his reassignment and wa6 never reinstated. These facts are. without more, inadequate to support a finding that the District made a policy change. Thus, this allegation must be dismissed.

Finally, the charge alleges in allegation C that the District attempted to lock out Mr. Petrich. This allegation is based on a December 19 incident in which Charging Party alleges that Mr. Petrich was not given his work keys for approximately one hour at the beginning of the day. There are no facts presented by the charging party which indicate that this incident was anything more than a misunderstanding between Mr. Petrich and his immediate supervisor. There are no facts which indicate that Mr. Petrich was not paid for this hour or the District was attempting to make a policy change or modify its contractual obligations under section 14.4.3. Therefore, this allegation must be dismissed.

For these reasons, the allegations that described above as 1. 2. 5. A. B. and C contained in charge number LA-CE-2112. as presently written, does not state a prima facie case. If you feel that there are any factual inaccuracies in this letter or any additional facts which would correct the deficiencies explained above, please amend the charge accordingly. 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

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signed under penalty of perjury by the charging party. The amended charge must be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before April 1. 1985. I shall dismiss the above-described allegation from your charge. If you have any questions on how to proceed, please call me at (916) 322-3198.

Sincerely yours,

Robert Thompson
Regional Attorney

PUBLIC EMPLOYMENT RELATIONS BOARD

Headquarters Office
1031 18th Street, Suite 101
Sacramento, California 95814
(916) 323-2531



April 2, 1985

Re: TONY PETRICH v. RIVERSIDE USD, LA-CE-2112

Dear Parties:

The Office of the General Counsel has issued a complaint in the above-entitled matter. The case is now assigned to the Division of Administrative Law.

The Respondent is now required to file an ANSWER (original and two copies pursuant to California Administrative Code, part III, title 8, section 32605) within 20 calendar days from date of service of this letter. The required contents of the ANSWER are described in section 32644. If you have not filed a notice of appearance form, one should be completed and returned with your ANSWER. Service on all parties to the proceeding is required, pursuant to section 32140.

An informal conference will be scheduled. If no settlement is reached at the informal conference, a formal hearing will be scheduled by the PERB. Parties should be prepared at the conference to submit at least three sets of proposed dates for formal hearing. The dates must fall within the 60-day period immediately following the informal conference.

Any communication to the Board concerning this matter shall be directed to the attention of the undersigned administrative law judge at the letterhead address. Please refer to the case number noted above.

Sincerely yours.

BARBARA MILLER

Administrative Law Judge

Attachments

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



Tony Petrich)
)
Charging Party,) Case No. LA-CE-2112
)
v.)
) COMPLAINT (Unfair - EERA)
Riverside Unified School District)
)
Respondent.)
_____)

It having been charged by Tony Petrich that Riverside Unified School District has engaged in certain unfair practices in violation of California Government Code section 3543.5, the General Counsel of the Public Employment Relations Board (PERB) on behalf of the PERB, pursuant to California Government Code sections 3541.3(h) and (i) and California Administrative Code, title 8, part III, sections 32620(b)(6) and 32640, issues this COMPLAINT and alleges:

1. The Respondent is a Public School Employer within the meaning of Government Code section 3540.1(k).
2. The Charging Party is an employee organization within the meaning of Government Code section 3540.1(d).
3. Tony Petrich is an employee within the meaning of Government Code section 3540.1(j).
4. Tony Petrich exercised rights guaranteed by the Educational Employment Relations Act (EERA) by filing grievances against the Respondent on or about September 24 and November 13, 1984 and filing an unfair practice charge against the Respondent on November 27, 1984.

5. On or about December 10, 11 and 19, i 4, Respondent, acting through its agent Principal Mary Ann Sund, took adverse action against Mr. Petrich by placing disciplinary letters in Mr. Petrich's personnel file.

6. Respondent took the actions described in paragraph 5 above because of the employee's activities described in # paragraph 4 above, and thus violated Government Code section 3543.5(a).

7. This conduct also constitutes a derivative violation of Government Code section 3543.5(b).

Any amendment to the charge shall be processed pursuant to California Administrative Code, title 8, part III, sections 32647 and 32648.

DATED: April 2, 1985

DENNIS M. SULLIVAN
General Counsel

By
Robert Thompson
Regional Attorney

(4/83)