

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



EDDA IRMA PETTYE,)
)
 Charging Party,) Case No. SF-CE-1037
)
 v.) PERB Decision No. 547
)
 FAIRFIELD-SUISUN UNIFIED SCHOOL) December 16, 1985
 DISTRICT,)
)
 Respondent.)
)
 _____)

Appearances: Edda Irma Pettye, on her own behalf; Breon, Galgani, Godino and O'Donnell by Gregory J. Dannis for Fairfield-Suisun Unified School District.

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

DECISION

This case is before the Public Employment Relations Board on appeal by charging party of the Board agent's dismissal, attached hereto, of her charge alleging that the Fairfield-Suisun Unified School District violated Education Code section 45110 and the Educational Employment Relations Act (EERA) (Gov. Code sec. 3540 et seq.).

We have reviewed the dismissal and finding it free from prejudicial error, adopt it as the Decision of the Board itself, in that the charge was not timely filed pursuant to EERA section 3541.5.

ORDER

The unfair practice charge in Case No. SF-CE-1037 is DISMISSED WITHOUT LEAVE TO AMEND.

By the BOARD.

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, California 94108
(415) 557-1350



September 24, 1985

Edda Irma Pettye

Greg Dannis

Re: REFUSAL TO ISSUE COMPLAINT AND DISMISSAL OF UNFAIR PRACTICE CHARGE
Edda Irma Pettye v. Fairfield-Suisun Unified School District
Charge No. SF-CE-1037

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 July 12, 1985 Ms. Edda Irma Pettye filed an unfair practice charge against the Fairfield-Suisun Unified School District (District) alleging violation of Education Code section 45110. Specifically, charging party alleges that the District refused to pay her equal pay for equal work; refused to pay her management pay for performance of management duties during the summer school program of 1984; and, continues to take retaliatory action against her for filing a grievance. Charging party lists as retaliatory the following conduct: used a non-validated, local developed testing device to preclude her from promotion; refused to grant her an opportunity to train in a position with known promotional potential; forced her to use her private vehicle as a condition of employment, and at the same time did not pay her any more than other employees using District vehicles. Charging party alleged that her claim for equal pay for equal work consists of a request for reclassification on the ground that, although she was classified and employed as a cafeteria assistant I, she performed the duties of a cafeteria assistant II. Charging party lists several alleged defects in the reclassification procedure followed in her case: she

¹References to the EERA are to Government Code sections 3540 et seq. PERB Regulations are codified at California Administrative Code, Title 8.

Edda Irma Pettye
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was not given an opportunity to appear before the board prior to the decision; the denial was not supported by explanation; there was no notification of the decision; and, the decision was not signed by the chairman or president of the board or the superintendent of schools. Charging party alleges that the procedures denied her the right to due process as well as rights established by District procedures and the collective bargaining agreement.

On September 10, 1985 the regional attorney wrote to charging party apprising her of the deficiencies in the charge, discussing legal principles applicable to the factual situation described in her charge, and informing her that unless withdrawn or amended by September 20, 1985, the charge would be dismissed. On September 20, 1985 the regional attorney initiated a telephone call to the home of charging party and left a message on her answering tape to the effect that no amendment or withdrawal had been received by PERB. Charging party was instructed by that message to telephone the PERB office in the event that either such document had been placed in the mail. To date, no withdrawal or amendment has been received.

For the reasons stated in the warning letter of September 10, 1985, it is concluded that the charge, as written, does not state a prima facie violation of EERA section 3543.5. The letter of September 10, 1985 is hereby attached and incorporated by reference. Accordingly, the allegations are dismissed and no complaint will be issued.

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 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 October 14, 1985, or sent by telegraph or certified United States mail postmarked not later than October 14, 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

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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 each copy of a document served upon a party or 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 specific time limits, the dismissal will become final when the time limits have expired.

Very truly yours,

JEFFREY SLOAN
Acting General Counsel

By | _____
PETER HABERFELD
Regional Attorney

cc: General Counsel

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, California 94108
(415) 557-1350



September 10, 1985

Edda Irma Pettye

Re: Edda Irma Pettye v. Fairfield-Suisun Unified School District
Charge No. SF-CE-1037

Dear Ms. Pettye:

On July 12, 1985 Ms. Edda Irma Pettye filed an unfair practice charge against the Fairfield-Suisun Unified School District (District) alleging violation of Education Code section 45110. Specifically, charging party alleges that the District refused to pay her equal pay for equal work; refused to pay her management pay for performance of management duties during the summer school program of 1984; and, continues to take retaliatory action against her for filing a grievance. Charging party lists as retaliatory the following conduct: used a non-validated, local developed testing device to preclude her from promotion; refused to grant her an opportunity to train in a position with known promotional potential; forced her to use her private vehicle as a condition of employment, and at the same time did not pay her any more than other employees using District vehicles. Charging party alleged that her claim for equal pay for equal work consists of a request for reclassification on the ground that, although she was classified and employed as a cafeteria assistant I, she performed the duties of a cafeteria assistant II. Charging party lists several alleged defects in the reclassification procedure followed in her case: she was not given an opportunity to appear before the board prior to the decision; the denial was not supported by explanation; there was no notification of the decision; and, the decision was not signed by the chairman or president of the board or the superintendent of schools. Charging party alleges that the procedures denied her the right to due process as well as rights established by District procedures and the collective bargaining agreement.

Jurisdiction:

PERB does not have jurisdiction to resolve claims seeking benefits under the Education Code. Amador Valley Secondary Educators Association v. Newlin (1979) 88 Cal.App.3d 254, Fresno Unified School District v. National Education Association (1981) 125 Cal.App.3d 259; Los Angeles Council of School Nurses v. Los Angeles Unified School District (1980) 113 Cal.App.3d 655, and Oakland Unified School District v. Public Employment Relations Board (1981) 120 Cal.App.3d 1007. Consequently, PERB has no jurisdiction to resolve disputes under Education Code section 45110.

Statute of limitations:

In San Dieguito Union High School District (1982) PERB Decision No. 194, PERB held that, to state a prima facie violation, charging party must allege and ultimately establish that the alleged unfair practice either occurred or was discovered within the six-month period immediately preceding the filing of the charge with PERB. EERA section 3541.5; Danzansky-Goldberg Memorial Chapels, Inc. (1982) 264 NLRB 112 [112 LRRM 1108]; American Olean Tile Co. (1982) 265 NLRB No. 206 [112 LRRM 1080]; A.F.C. Industries, Inc. (Amcar Division) (1978) 234 NLRB 1063 [98 LRRM 1287], enf'd as modified (8 Cir. 1979) 596 F.2d 1344 [100 LRRM 3074]. The National Labor Relations Board cases cited here hold that the six-month period commences on the date the conduct constituting the unfair practice is discovered. It does not run from the discovery of the legal significance of that conduct.

Discrimination:

The PERB has ruled that for a charge to state a prima facie unfair practice case of unlawful discrimination, it must allege facts which, if proven, establish: (1) employer conduct which singles out the employee and denies him/her a benefit otherwise accorded to employees similarly situated; (2) an exercise by the employee of a protected right; and, (3) such selective treatment would not have occurred "but for" his/her exercise of a protected right. Novato Unified School District (1982) PERB Decision No. 210; California State University (Sacramento) (1982) PERB Decision No. 211-H.

The nexus between the employer conduct and the protected activity is established by alleging unlawful motivation on the part of the employer. In Placerville Union School District (1984) PERB Decision No. 377, PERB stated that where direct evidence of unlawful motivation is lacking, it has generally looked to such factors as timing (North Sacramento School District (1982) PERB Decision No. 254; Coast Community College District (1982) PERB Decision No. 251), disparate treatment (San Joaquin Delta Community College District (1982) PERB Decision No. 261; San Leandro Unified School District (1983) PERB Decision No. 288), departure from past procedures (Novato Unified School District (1982) PERB Decision No. 210), and inconsistent justifications (State of California (Department of Parks and Recreation) (1983) PERB Decision No. 328-S) which, under certain circumstances, may support an inference of unlawful motivation. Also see University of California (1983) PERB Decision No. 308-H.

Investigation:

Investigation and examination of this charge revealed the following. Charging party filed her request for reclassification on June 27, 1983. Upon rejection at step 1, charging party appealed denials to successively higher steps. The governing board met and ultimately denied her request on January 6, 1984. This decision was communicated to charging party by letter of February 1, 1984.

On June 25, 1983 charging party filed a grievance complaining of the reclassification procedure. That grievance was never pursued beyond level 1 of the procedure set forth in the collective bargaining agreement. The denial of the grievance on February 8, 1984 was final.¹

Charging party concedes that she has used her private vehicle in the course of performing services for the District and that such practice has been in effect for a considerable period of time. (See Attachment 10 of charge.) On January 17, 1984 (or 1985) charging party stated to the District that the 25 cents per mile it pays is inadequate. On March 5, 1985 charging party addressed the District by letter refusing to use her personal vehicle any longer.

Conclusion:

Charging party has failed to state a prima facie violation of EERA section 3543.5 for the following reasons. First, allegations that the District violated the requirements of the Education Code concerning reclassification of employees is not properly before PERB. If those claims are not stale, relief might be sought by filing an action in the superior court.

Second, any claim in this case that the District retaliated against charging party for having filed a grievance appears to be time-barred. No allegedly unlawful District conduct is alleged to have taken place within the six months preceding the filing of the unfair practice charge on July 12, 1985. An explanation follows.

1. Charging party has alleged that she was required by the District to drive her personal vehicle as a condition of employment. However, the practice of driving a personal vehicle predates the filing of the grievance on June 25, 1983. There is no suggestion that the District's position changed subsequent to the filing of the grievance and that the grievance precipitated the requirement. It is not sufficient that charging party concluded, subsequent to the date on which the grievance was filed, that driving her personal car was a condition of employment.² Charging party has not alleged facts which could

¹It appears from correspondence between charging party and the California School Employees Association (CSEA or Association) that the grievance was held in abeyance pending outcome of the request for reclassification. See unfair practice charge filed by charging party (SF-CO-279) on July 12, 1985.

²Charging party states that the District continues to deny that driving a personal car is a condition of employment, but insists that she manage to arrive at the job location in some manner. Charging party states that her

demonstrate that the requirement that she drive her private vehicle was imposed in retaliation for her having filed a grievance.

2. Charging party alleges further that, subsequent to filing a grievance on June 25, 1983, she was denied an opportunity to train in a position with promotional potential. The District has informed the regional attorney that charging party was hired as a food service assistant II during the summer of 1984, as well as for three days at Grange School in August 1984. This information is confirmed by attachments to the unfair practice charge filed against CSEA (SF-CO-279). Both occasions occurred subsequent to her having filed a grievance. At this point it is undisputed that charging party received an opportunity to train subsequent to having filed a grievance.

3. Charging party has objected to the test required as a precondition for promotion. Yet she has not alleged the dates on which she took such a test, whether she was obliged to take a different test from that given to other applicants, whether there were other applicants, or in what manner the test did not consist of fair and objective questions directly related to the job being applied for. Consequently, there are no allegations to support a claim that she was adversely affected or that, if there was such an adverse effect, that it was connected in any way with her having filed a grievance on June 25, 1983.

4. It could be that charging party is alleging that she was required to perform management duties in the summer of 1984 and that such requirement was in retaliation for her having filed a grievance on June 25, 1983. However, no date is alleged on which such duties were performed. Nor are the duties described. Consequently, charging party has not alleged conduct which had an adverse effect on her within the six months preceding the filing of the charge. Consequently, there is also no nexus shown between an alleged adverse effect and the filing of the grievance approximately 1-1/2 years earlier.

Charging party's allegations concerning alleged defects in the reclassification procedure do not state a prima facie violation. The impact of the procedures on charging party occurred prior to February 1, 1984, the date on which she was informed that her request for reclassification was rejected. The charge is untimely. Instead of being filed within six months from the date of the alleged injury, it was not filed until July 12, 1985, approximately seventeen months later.

If you feel that there are facts which would correct the deficiencies explained above, please amend the charge accordingly. The amended charge

only means of traveling to the other schools is by automobile and, therefore, the District is "in effect" conditioning her job on her possession of an automobile.

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 (forms enclosed). The amended charge must be served on the respondent and the original proof of service must be filed with PERB (forms enclosed). If I do not receive an amended charge or withdrawal from you on or before September 20, 1985, I shall dismiss your charge. If you have any questions on how to proceed, please call me at (415) 557-1350.

Sincerely yours, /

Peter Haberfeld (
Regional Attorney

Enclosures