

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



TONY PETRICH,)
)
 Charging Party,) Case No. LA-CE-2188
)
 v.) PERB Decision No. 562
)
 RIVERSIDE UNIFIED SCHOOL DISTRICT,) January 24, 1986
)
 Respondent.)
 _____)

Appearance: Tony Petrich, on his own behalf.

Before Jaeger, Burt and Porter, Members.

DECISION

JAEGER, Member: This case is before the Public Employment Relations Board (Board) on appeal by Tony Petrich of the partial dismissal of an unfair practice charge filed by Mr. Petrich against the Riverside Unified School District. Mr. Petrich's charge, which included four amendments, contained numerous allegations of unlawful conduct on the part of the District. As set forth in the attached letter of partial dismissal and its attachments, the Board agent who reviewed the charge pursuant to Regulation 32620¹ identified and numbered twenty-one independent allegations of unlawful conduct. Upon her review of these allegations, the Board agent found eight which stated prima facie cases and thus warranted issuance of a complaint. The remaining allegations she dismissed.

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

On appeal, Mr. Petrich argues that the Board agent failed to review or treat in any way one of the allegations of unlawful District conduct which he made in his charge. He further argues that the Board agent erred in dismissing allegation number 21, which she did without providing explanatory rationale.

While it is true that the Board agent's letter of partial dismissal fails to acknowledge one of Mr. Petrich's allegations and fails to offer a rationale for the dismissal of allegation number 21, we find that these matters are properly dismissed.

In his original charge, Mr. Petrich alleges that on March 4, 1985, at about 12:40 p.m., he attempted to enter the offices of the District's personnel department in order to call on Assistant Superintendent Frank Tucker, whose office is located within, but was unable to do so because he found the doors of the personnel department locked. The charge further alleges that Article IV of the collective bargaining agreement covering Mr. Petrich's bargaining unit provides that the District "will not lock out its employees." Mr. Petrich alleges that by locking the doors of the personnel office during the lunch hour of March 4, 1985, the District violated the terms of Article IV and thus committed an unlawful unilateral change in working conditions.

From the contextual tenor of the charge as a whole, we take it that Mr. Petrich does not make his allegation in jest. In any event, we note that the term "lock out" has a very well-established meaning in the labor relations field. We find

it clear, from the surrounding context of Article IV, that the term was certainly used to denote an employer practice of closing its operations during a labor dispute to prevent its workforce from working. The incident described by Mr. Petrich cannot reasonably be found to have amounted to a "lockout" as above defined.

Allegation number 21 is accurately summarized in the Board agent's warning letter. The gist of the allegation seems to be that, by issuing a highly critical evaluation, the District was engaging in an unlawful reprisal against Mr. Petrich and that, by attaching to the evaluation a letter of complaint authored by one of Mr. Petrich's fellow employees, the District engaged in a unilateral change of working conditions. We find that nothing in the charge reasonably suggests a causal link between protected activity engaged in by Mr. Petrich and the issuance of the critical evaluation. We further find that the charge fails to allege facts which, if proved, would show that the District unilaterally changed its policy on attachments to classified employee evaluations.

ORDER

With the exception of allegations 1, 8, 9, 10, 12, 16, 17 and 18 as identified by the Board agent and as to which a complaint has issued, the allegations set forth in Charge No. LA-CE-2188 are DISMISSED.

Members Burt and Porter joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

LOS ANGELES REGIONAL OFFICE
LOS ANGELES, CALIFORNIA 90010
(213) 736-3127



August 27, 1985

Tony Petrich

RE: LA-CE-2188, Tony Petrich v.
Riverside Unified School District
PARTIAL DISMISSAL OF UNFAIR PRACTICE CHARGE

Dear Mr. Petrich:

The above-referenced charge filed on May 22, 1985 and four amended charges filed thereafter allege that the Riverside Unified School District discriminated against Mr. Petrich and acted unilaterally in violation of Government Code section 3543.5(a), (b), and (c) of the Educational Employment Relations Act (EERA) as specified in the attached letter dated August 16, 1985.

I indicated to you in the August 16, 1985 letter that certain allegations contained in the charge did not state a prima facie case. You were advised 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. You were further advised that unless you amended these allegations to state a prima facie case, or withdrew them prior to August 26, 1985, they would be dismissed,

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 based on the facts and reasons contained in my August 16, 1985 letter.

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 September 16, 1985, or sent by telegraph or certified United States mail postmarked not later than September 16, 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, 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 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 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 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 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).

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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

Barbara T. Stuart
Regional Attorney

cc: Charles Field, Esq.

Attachment

BTS:djm

PUBLIC EMPLOYMENT RELATIONS BOARD

LOS ANGELES REGIONAL OFFICE
3470 WILSHIRE BLVD., SUITE 1301
LOS ANGELES, CALIFORNIA 90010
(213) 734-3127



August 16, 1985

Tony Petrich

Re: LA-CE-2188, Tony Petrich v. Riverside Unified
School District

Dear Mr. Petrich:

The above-referenced charge filed on May 22, 1985 and four amended charges filed thereafter allege that the Riverside Unified School District discriminated against Mr. Petrich and acted unilaterally in violation of Government Code section 3543.5(a), (b), and (c) of the Educational Employment Relations Act (EERA).

The charge filed on May 22, 1985 alleges:

1. A March 4, 1985 memorandum to Mr. Petrich from District Superintendent Frank C. Tucker memorialized an incident on the same date whereby Mr. Petrich entered Mr. Tucker's office when neither he nor his secretary were present. The memorandum directed Mr. Petrich not to enter Mr. Tucker's office unless he was present. See paragraphs 6 through 9 and exhibits 1 through 4 of the charge.
2. Mr. Tucker failed to hold a level II conference for a February 7, 1985 grievance filed by Mr. Petrich in violation of the District's obligation set forth in section 18.2.2 of the 1982-85 agreement between the District and Mr. Petrich's exclusive representative. See paragraphs 6, 7 and 10 and exhibits 1 and 5 of the charge.
3. On March 8, 1985, Mr. Petrich filed a grievance regarding Mr. Tucker's March 4, 1985 memorandum mentioned in paragraph 1 above. In violation of subsection 18.2.1 of

the negotiated contract, North High School Plant Supervisor Hodnett advised Mr. Petrich that he would not hold a level I conference. Instead, the grievance was submitted to North High School Principal Douglas Wolf who in turn submitted it to Mr. Tucker who held the level I conference himself on March 21, 1985. Mr. Tucker's reply was drafted in the space on the form reserved for the immediate supervisor's response and Mr. Tucker changed the form to read, "Grievance Form-Level II". See paragraphs 11 through 14 and exhibits 3, 6 and 7 of the charge.

4. On March 15, 1985, in a "derogatory communication" from Mr. Tucker placed in Mr. Petrich's personnel file, the District denied Mr. Petrich personal necessity leave for March 7, 1985 when he attended a PERB informal conference concerning unfair practice charge LA-CE-2097. For a prior similar occasion the District had approved personal necessity leave with pay. See paragraphs 17, 18 and 32 and exhibits 8 and 9 of the charge.

5. When Mr. Petrich attended the March 7, 1985 PERB informal conference described in paragraph 4 above, the District docked him 6-1/2 hours pay without previous notice which would have afforded him the right to request a hearing as provided in section 19.1 of the negotiated contract. See paragraphs 17, 18, 31, 32, 33 and 34 and exhibits 7, 8 and 9 of the charge.

6. Beginning on or about March 21, 1985, Mr. Petrich's brief case, which was locked and secured in the trunk of his car, was opened on more than one occasion by unauthorized persons. See paragraphs 19, 23, 26, 29, 32 and 33 of the charge.

7. On or about March 28, 1985, Mr. Hodnett, absent prior notification or any justification, removed the master key from Mr. Petrich's district ring set and

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replaced it with a new "section" key which denies his free access to and from one of his assigned work areas. See paragraphs 21, 32 and 33 of the charge and paragraph 9 of the first amended charge.

8. On March 28, 1985 Mr. Petrich received a "derogatory communication" from Mr. Hodnett, also placed in his personnel file, stating that Mr. Petrich failed to obey directions because he replaced a broken light cover in the Attendance Office in direct contradiction to instructions and failed to clean the girls' restroom. See paragraphs 22, 32 and 33 and exhibit 10 of the charge.

9. On April 2_f, 1985, Mr. Petrich received a "derogatory memorandum" from Mr. Hodnett, also placed in his personnel file, stating that Mr. Petrich failed to properly clean the girls' restroom and left it unlocked. See paragraphs 25, 32 and 33 and exhibit 11 of the charge.

10. On April 26, 1985 Mr. Petrich received a "derogatory memorandum", also placed in his personnel file, from North High School Vice-Principal Richard Moshier concerning Mr. Petrich's "insubordination" in refusing to comply with parking regulations at the high school. This document was allegedly drafted and placed in the personnel file because Mr. Petrich requested representation at a meeting held on the same date to discuss the issue. See paragraphs 26, 28, 29, 32 and 33 and exhibit 12 of the charge.

11. On April 30, 1985, Mr. Petrich noticed that his April pay warrant reflected a dock for 1/2 day without a hearing because his physician's verification of illness for March 25, 1985 was found unsatisfactory. See paragraphs 30, 31, 32, 33 and 34 and exhibits 13 and 14 of the charge.

12. When questioned regarding the April pay dock described in paragraph 11 above, Mr. Hodnett presented Mr. Petrich with a

"derogatory memorandum" dated April 29, 1985, also placed in his personnel file, containing a list of Mr. Petrich's sick leaves and other absences since his reassignment to North High School on February 25, 1985, noting the absence of physician verifications, and referencing occasions when the girls' restroom was not clean. See paragraphs 30, 31, 32, 33 and 34 and exhibits 13 and 14 of the charge.

The first amended charge filed on June 10, 1985 alleges:

13. With reference to paragraph 6 above, on May 29 and 31, 1985 Mr. Petrich found fresh pry marks on the trunk rail of his car and determined that someone had searched his briefcase. See paragraphs 4 and 10 of the first amended charge.

14. On May 31, 1985, Mr. Petrich noted that Mr. Hodnett had docked his May pay warrant 1-1/2 days' pay for April 22 and 23, 1985 although Mr. Petrich had submitted a physician's certificate of illness. See paragraphs 5, 10 and 11 and exhibit 1 of the first amended charge, and exhibit 14 of the charge.

15. The District proposed a 30-workday suspension against Mr. Petrich. See paragraphs 7 and 8 of the charge.

16. On June 7, 1985, Mr. Petrich received a "derogatory communication" from Mr. Hodnett, also placed in his personnel file, stating that Mr. Petrich was late to work on various occasions, failed to follow his assigned work schedule and otherwise did not perform his duties. See paragraphs 9 and 10 and exhibit 2 of the first amended charge.

The second amended charge filed on June 18, 1985 alleges:

17. On June 14, 1985, Mr. Petrich received a "derogatory communication" dated June 12, 1985 from Principal Wolf, also placed in his personnel file, alleging that on May 30,

1985 Mr. Petrich had a student purchase a package of cigarettes for him. Mr. Petrich was directed not to send students off campus on errands in the future. See paragraphs 3 and 4 and exhibit 1 of the second amended charge.

The third amended charge filed on June 24, 1985 alleges:
18. On June 20, 1985, Mr. Petrich received a "derogatory communication" dated June 19, 1985 from Mr. Wolf, also placed in his personnel file, stating that Mr. Petrich had made various offensive statements to a teacher in several conversations. The memo asked Mr. Petrich to refrain from further attentions in the future. See paragraphs 5 through 7 and exhibit 1 of the third amended charge.

The fourth amended charge filed on July 5, 1985 alleges:

19. On June 19, 1985, Mr. Petrich received written notification from Mr. Hodnett that effective June 21 through August 30, 1985, his work hours would be changed from 7:00 a.m. - 3:30 p.m. to 6:00 a.m. - 2:30 p.m., and his lunch hour would be 1/2 hour instead of one hour. See paragraphs 3, 7 and 8 and exhibit 1 of the fourth amended charge.

20. The District changed the entire night shift, with the exception of two individuals, to a day shift and reduced their lunch hour to 1/2 hour. See paragraphs 3, 7 and 8 and exhibit 1 of the fourth amended charge.

21. On June 26, 1985, Mr. Petrich attended an evaluation conference wherein he was represented by his exclusive representative. He was presented with an evaluation form which specified many factors which were "unsatisfactory" or "improvement needed". Mr. Hodnett also indicated on the form, "I believe if Tony is to avoid termination he must come to 95% of the

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workdays, work diligently for a full shift each day, accept direction cheerfully, and do quality work." Attached to the evaluation were all of the "derogatory materials" given Mr. Petrich between March 28 and June 19, 1985. Also attached was a "derogatory written statement" drafted by another employee which Mr. Petrich alleges is improperly attached to the evaluation. See paragraphs 6 through 9 and exhibit 2 of the fourth amended charge.

My investigation revealed the following facts regarding the above allegations. Mr. Petrich has been employed by the District for approximately seventeen years. He has had a history of personnel issues with the District since 1982. In 1982 Mr. Petrich filed five grievances pursuant to the grievance procedure negotiated between the District and his exclusive representative, the California School Employees Association (CSEA).

In 1984 Mr. Petrich filed two grievances regarding the placement of alleged derogatory materials in his personnel file. He also filed two unfair practice charges against the District. The first was charge LA-CE-2097 filed on November 27, 1984. The second was charge LA-CE-2112 filed on December 26, 1984. Both charges resulted in partial dismissals and partial complaints issued respectively on January 15 and April 2, 1985. No decision has yet issued after the joint formal hearing was held in July 1985.

In 1985 Mr. Petrich filed numerous grievances and unfair practice charges as summarized here and in the attached "Summary of Petrich Cases":

1. Charge LA-CE-2114 filed on January 2, 1985 resulted in a dismissal affirmed by the Board in Petrich v. Riverside Unified School District (1985) PERB Decision No. 511.

2. Charge LA-CE-2129 filed on February 4, 1985 resulted in a dismissal affirmed by the Board in Petrich v. Riverside Unified School District (1985) PERB Decision No. 512.

3. Charge LA-CE-2130 filed on February 4, 1985 resulted in a partial dismissal and a partial complaint affirmed by the Board in Petrich v. Riverside Unified School District (1985) PERB Decision No. 513.

4. Charge LA-CE-2131 filed on February 4, 1985 resulted in a dismissal presently on appeal to the Board,
5. Charge LA-CE-2134 filed on February 11, 1985 resulted in a partial complaint and a partial dismissal presently on appeal to the Board.
6. Charge LA-CE-2143 filed on March 1, 1985 resulted in a partial complaint and a partial dismissal presently on appeal to the Board.

Based on the following facts and reasons, certain of the paragraphs alleged in the instant charge and four amended charges will be dismissed absent amendments which would cure the defects. A complaint will issue on the allegations referred to in paragraphs 1, 8, 9, 10, 12, 16, 17 and 18 above.

2. The charge alleges that the District failed to hold a level II conference for a February 7, 1985 grievance filed by Mr. Petrich in violation of the District's obligation set forth in section 18.2.2 of the collective bargaining agreement. In fact the conference was held at the District office at 3:00 p.m. on March 7, 1985, just before the PERB informal conference held at 3:30 p.m. on the same date described in paragraph 4, infra. Present were Mr. Tucker representing the District and CSEA representatives Corona and Prince. Mr. Petrich did not appear.

No violation of the EERA exists here because the District conformed to the negotiated contract. It may be that Mr. Petrich did not receive notice of the level II conference although his CSEA representatives did. If there was such a mistake, there has been no showing of a policy change having a "generalized effect or continuing impact upon the terms and conditions of employment" as required by Grant Joint Union High School District (1982) PERB Decision No. 196. Therefore this allegation of the charge will be dismissed.

3. It is undisputed that Mr. Petrich's March 8, 1985 grievance concerning the memorandum directing him not to enter Mr. Tucker's closed office was not processed at level I of the grievance procedure, but instead was forwarded directly to Mr. Tucker for response. While the contract does not expressly allow this the District has records indicating a past practice, in which CSEA has

acquiesced, of bypassing the first step of the grievance procedure when the lower-level supervisors would be unable to effectuate a remedy. In the present case both Plant Supervisor Hodnett and Principal Wolf had no knowledge of the office incident nor any ability to remedy the grievance.

Unless Mr. Petrich can produce facts demonstrating a different past practice and a deviation from that practice, this aspect of the charge will be dismissed since no unilateral change has been demonstrated.

4. The District denied Mr. Petrich 8 hours' personal necessity leave for March 7, 1985 when he attended a PERB informal conference concerning unfair practice charge LA-CE-2097. It docked him 6-1/2 hours' pay. Mr. Petrich claims that the District had previously allowed him personal necessity leave to attend an unfair practice informal conference and that he received disparate treatment as compared to his CSEA representatives who also attended the March 7 informal conference.

On March 7, 1985, the informal conference was held at 3:30 p.m. in Riverside. Mr. Petrich took the entire day off from work without permission. When he claimed personal necessity leave for the occasion, the District allowed him one hour released time from 2:30 to 3:30 p.m. for clean-up and travel time, and from 3:30 p.m. to the end of his shift at 4:00 p.m. for the informal conference. Mr. Petrich was docked for the remainder of the time taken off.

Also present at the informal conference were CSEA representatives Corona and Prince. The District records show that Mr. Corona left work at 2:50 p.m. and Mr. Prince at 2:45 p.m. to attend a 3:00 p.m. level II grievance hearing concerning Mr. Petrich's February 7, 1985 grievance referenced in paragraph 2 on page 1 of this letter. Thereafter, they attended the 3:30 p.m. informal conference. Both received released time from 2:50 p.m. or 2:45 p.m. until the end of their work day.

The previous PERB informal conference to which Mr. Petrich refers in case LA-CO-230 was held midday on June 15, 1982 at the PERB regional office in downtown Los Angeles, thereby necessitating an entire day off from work. Under section 13.5.2(8) of the negotiated contract, personal necessity leave is allowed at the "discretion of the District" with certain caveats which do not apply to the instant situation.

The foregoing facts do not show a change in the District's policy in release time or disparate treatment of Mr. Petrich as compared to

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his CSEA representatives. In fact they show a consistent policy and practice. Because there has been no unilateral change, this aspect of the charge will be dismissed.

5. The charge alleges that the District docked Mr. Petrich 6-1/2 hours' pay for the March 7, 1985 informal conference described above without previous notice which would have afforded him the right to request a hearing as provided in section 19.1 of the negotiated contract. However, on July 12, 1984, Mr. Petrich stated in a telephone conversation with the Regional Attorney that he did in fact receive the notice, request a hearing, and attend a hearing held on March 22, 1985. Therefore, this aspect of the charge will be dismissed.

6 and 13. Mr. Petrich alleges that his brief case, which was locked and secured in the trunk of his car, was opened on more than one occasion by unauthorized persons. He assumes those persons were representatives of the District. He has no evidence tending to show that a representative of the District left pry marks on the trunk rail of his car or searched his brief case other than the facts recited in paragraphs 19, 23, 26 and 29 of the charge and paragraph 4 of the first amended charge. Since these factual allegations are insufficient to prove the matter, these paragraphs of the charge will be dismissed.

7. The charge alleges that Mr. Hodnett, absent prior notification or any justification, removed the master key from Mr. Petrich's ring set and replaced it with a "section" key which denies his free access to and from the room where he stores his tools.

The District states that only four of 15 custodian/gardeners carry a master key. These are the Night Custodian, Saturday Custodian, Lead Custodian, and the Custodian assigned to supply all rooms with paper and other products. The Night Custodian and Saturday Custodian work alone. The Lead and Supply Custodian may be located by the other employees if they have need **to enter rooms outside their assigned section.**

Mr. Petrich was originally given a master key because he was storing his tools in an area where his section key did not work. However, according to the District, he was using the master key to enter areas he was not normally assigned to do work he selected and preferred to do while he neglected his assigned duties. As a result he was asked to return the master key and move his tools to an area where the section key would work. He refused to do this.

The facts show no evidence of reprisal against Mr. Petrich because he has not been treated differently than any other employee similarly situated. The four employees who have master keys all function in a special capacity. Additionally, assignment of master keys is not a matter within the scope of bargaining and does not affect Mr. Petrich's working conditions. The District retains the managerial prerogative to assign Mr. Petrich work in the areas it chooses and to give him access to those areas. The withdrawal of the master key was not an action adverse to Mr. Petrich because it did not affect his working conditions and was not a disciplinary action. For these reasons, this aspect of the charge does not state a prima facie case and will be dismissed.

11. The charge alleges that on April 30, 1985 Mr. Petrich found that his April pay warrant reflected a dock of 1/2 day because his physician's verification of illness for March 25, 1985 was found unsatisfactory. The District had notified Mr. Petrich in February 1985 that all future sick leave absences must be substantiated by a physician's verification due to excessive use of sick leave in the past. This procedure is authorized in the District's discretion by section 13.3.4 of the negotiated contract. The District states that two other current employees are also required to provide verification of sick leave and that other employees have been so required in the past.

Mr. Petrich was absent on Friday, March 22 for 1-1/2 hours for a doctor's appointment and did not provide verification. On Monday, March 25 he had a doctor's appointment and did not return to work resulting in an absence of 4-1/2 hours. On March 26 he was present at work and was requested to provide verification that he was unable to return to work after the appointment on March 25. He was absent all day on March 27. On March 28 he came to work and presented a physician's verification that said he was sick on March 22 but could return to work on March 28. On March 29 he was absent for 1-1/2 hours for a doctor's appointment. On Monday, April 1 he was absent all day. On April 2 he presented a verification which said he was under a doctor's care from March 25 to April 1 and could return to work on April 2. The District was confused because Mr. Petrich had been back to work on several occasions during the time period covered by the doctor's notes and Mr. Hodnett directed Mr. Petrich to correct the inconsistencies. Mr. Petrich did not supply any doctor's verification to correct the confusion nor did he bring in the requested verification to cover the 4-1/2 hours on March 25. The District docked him for this time.

The negotiated contract provides in section 19.0 of Article XIX on Disciplinary Action and Dismissal Procedures that the District may

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dock pay for an absence without authority. According to the same section 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." Section 19.1 provides that a permanent employee has a right to request an the informal hearing with the immediate supervisor prior to disciplinary action.

These sections on discipline do not apply to the instant situation because Mr. Petrich's hours were not docked as a matter of discipline. Rather, they were docked because he failed to provide a physician's verification as allowed by the contract.

The foregoing facts do not indicate any irregularities in the District's procedure in docking Mr. Petrich's pay for March 25, 1985. For this reason this aspect of the charge will be dismissed.

14. On May 31, 1985, Mr. Petrich noted that his May pay warrant was docked 1-1/2 days' pay for April 22 and 23, 1985 although he had submitted a physician's certificate of illness. The District's, files do not contain the April 25, 1985 verification which is attached to the first amended charge as exhibit 1. Absent this verification the District docked Mr. Petrich's pay in accordance with normal procedures.

Again, section 13.3.4 of the negotiated contract allows the District to require verification of sick leave absences and section 19.1 confers the right to request a hearing on a pay dock only when it is the result of disciplinary action. Mr. Petrich could have filed a grievance pursuant to Article XVIII of the negotiated contract entitled Grievance Procedures, although he did not.

No violation of the EERA exists here because the District conformed with the negotiated contract and established procedures. There may have been a mistake in that Mr. Petrich submitted and the District misfiled the verification, but in such case there is no showing of a policy change having a "generalized effect or continuing impact upon the terms and conditions of employment" as required by Grant Joint Union High School District, supra. Therefore this allegation of the first amended charge will be dismissed.

15. The allegation that the District proposed a 30-workday suspension against Mr. Petrich is the subject of case LA-CE-2143 previously filed and currently being processed. In order to avoid redundant litigation of the same issue this allegation must be dismissed.

19. The charge alleges that the District unilaterally changed Mr. Petrich's work hours effective June 21 through August 30, 1985 from 7:00 a.m. - 4:00 p.m. to 6:00 a.m. to 2:30 p.m. with a lunch hour of one-half hour instead of one hour. The District has records showing that the past practice for at least 20 years has been to change the summer hours of employees in this manner to accommodate the cooler morning hours and an earlier watering schedule. Section 10.6 of the negotiated contract provides that the length of the lunch period "shall be for a period no longer than one (1) hour nor less than one-half (1/2) hour". The District's action was consistent with this provision. Mr. Petrich has not supplied any facts showing that the past practice is otherwise. This allegation will be dismissed.

20. The charge alleges that the District changed the entire night shift of custodians, with the exception of two individuals, to the day shift and reduced their lunch hour from one hour to one-half hour. Again, the District's records indicate a consistent past practice of 20 years' duration of switching the night shift to the day shift during the summer holiday and shortening the lunch hour from one hour to one-half hour. Absent facts indicating a different past practice this allegation of the charge must be dismissed.

Opportunity to Amend

For the reasons stated above, the charge as presently written does not state a prima facie violation of the EERA. If you feel that there are facts or legal arguments which would require different conclusion, an amended charge should be prepared on a standard PERB unfair practice charge form clearly labeled First Amended Charge, should contain all the allegations you wish to make and be signed under penalty of perjury. 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 by August 26, 1985, I shall dismiss your charge. If you have any questions regarding how to proceed, please call me at (213) 736-3127.

Sincerely,



Barbara T. Stuart
Regional Attorney

Attachment

BTS:djm

SUMMARY OF PETRICH CASES

LA-CE-2097 NOT APPEALED

Complaint: 1/15/85

1. Docked pay as reprisal. (a)
2. Unilateral change of policy embodied in contract by docking pay without prior opportunity to request hearing. (a) and (c)
3. Unilateral change of policy embodied in contract by denying two hours released time to respond to derogatory material placed in personnel file. (a) and (c)
4. Unilateral creation of restriction regarding location where employee must prepare a response to derogatory material placed in personnel file. (a) and (c)

Dismissal: 1/15/85

1. Disallowed the accrual of time to respond to derogatory material placed in personnel file. Rationale: Contract ambiguous or silent. No past practice established, thus no change shown.

LA-CE-2112 AFFIRMED #510

Complaint: 4/2/85

1. Principal Sund placed disciplinary letters in personnel file re December 10 keys incident, December 11 absence from work, and December 19 keys incident. (a) derivative (b)

Dismissal: 4/2/85

1. December 7, 1984 denial of personal necessity leave to file unfair practice charge. Rationale: No nexus shown between protected activity and employer's action. Employee does not have the right to unilaterally decide to miss work in order to file a charge.

2. District placed a letter from the Association concerning Petrich in his personnel file. Rationale: No showing of adverse impact.

3. December 14, 1984 Petrich reassigned from Woodcrest Elementary School to North High School. Rationale: No showing of adverse impact. Work hours, customary duties and commuting distance for the new job are essentially identical to the old.

4. Pay docked without prior hearing claimed to be a unilateral change. Rationale: Facts show Petrich was given an opportunity to request a hearing prior to the docking.

5. December 14, 1984 work hours unilaterally changed from 7:00 a.m. to 6:30 a.m. upon reassignment to North High School. Rationale: Changed starting time rescinded the first day and never reinstated.

6. December 19, 1984 unilateral change by locking Petrich out of his job. Rationale: Incident appears a misunderstanding between Petrich and his supervisor; Petrich paid for the one hour; no facts re District policy change or modification of contractual obligations.

LA-CE-2114 AFFIRMED #511

Dismissal: 3/14/85

1. November 20, 1984 failure to provide grievance forms in a timely manner and Petrich opinion that form is inadequate. Rationale: No protected right to obtain grievance forms on demand or have them redesigned. No showing Petrich prevented from filing grievances or the forms so inadequate they interfere with his right to file grievances. No facts show form unilaterally changed. No (d) violation.

LA-CE-2130 AFFIRMED #513

Complaint: 4/10/85

1. January 8, 1985 correction memo from Principal Sund placed in personnel file re refusal to remove leaves. (a)

2. January 17, 1985 Sund dismissal recommendation. (a)

3. January 30, 1985 letter from Assistant Superintendent Tucker re pay dock for illnesses absent physician verification. (a)

Dismissal: 1/10/85

1. August 21, 1984 Sund placement of derogatory material in personnel file. Rationale: Already alleged in LA-CE-2134.

2. January 8, 1985 hubcap letter from Tucker re inappropriate gift. Rationale: The letter does not concern Petrich working conditions, or contain a threat, thus no harm to employee rights.

3. January 14, 1985 pre-disciplinary meeting Sund said she didn't want to postpone it and wanted Petrich to have a different representative. Rationale: The meeting was delayed and Petrich had the representative of his choice. No interference with his rights. Employer has free speech absent a threat or interference.

4. January 17, 1985 Sund memorandum describing the pre-disciplinary meeting noted Petrich pointed out the date on a memo was incorrect and he might have to file a grievance. Rationale: Memo only summarized what was said at the meeting. No threat.

5. January 30, 1985 Tucker letter re future pay docks for unauthorized absences. Rationale: No policy change since pay not yet docked without opportunity to request a hearing.

6. February 12, 1985 Tucker inflexibly insisted a grievance conference be scheduled at a certain date and time. Rationale: Petrich able to attend so no harm shown to his employee rights.

LA-CE-2123 AFFIRMED #512

Dismissal: 3/25/85

1. Alleged supervisors unlawfully included in his bargaining unit. Rationale: No standing. Only employers and employee organizations can file unit modification petitions. Statute of limitations ran and not a continuing violation. No facts given re supervisory duties.

LA-CE-2134

Complaint: 5/8/85

1. August 23, 1984 meeting re proposed work hour change at which Sund and another supervisor threatened to cut hours or find someone else for the job. (a)

Dismissal: 5/8/85

1. September 1984 proposed change of work hours. Rationale: Hours changed only after agreement with exclusive representative that Petrich would receive an extra vacation day each year. Hours change of one employee may not be policy change or negotiable.

LA-CE-2131

Dismissal: 5/7/85

1. 1976 to present District unilaterally shaved salary increases due classified employees. Rationale: No continuing violation and union and Petrich had constructive notice through access to the salary schedules. They cannot claim they did not understand the significance of the numbers.

LA.-CE-2143

Complaint: 5/31/85

1. February 1985, Assistant Superintendent Tucker recommended the dismissal of Petrich, which was reduced to a recommended 30-day suspension.

Dismissal: 5/31/85

1. Derogatory material placed in personnel file more than five days after a copy given to Petrich. Rationale: Contract language ambiguous, but past practice is five or more days.
2. January 17, 1985 failure to receive corrected memorandum placed in personnel file. Rationale: No unilateral change with generalized effect or continuing impact.
3. February 25, 1985 reassignment to North High School changed classification, duties and hours. Rationale: No change of classification or duties demonstrated. Past practice to effectuate involuntary transfers when in the best interests of the District after agreement with exclusive representative. Past practice to change hours if the new shift hours at the new school are different. No showing of generalized effect or continuing impact.
4. February 25, 1985 reassignment a reprisal. Rationale: No adverse impact with essentially the same work hours, duties and commuting distance.