

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



HARRY CHRISTOPHER FIEGER,)
)
 Charging Party,) Case No. LA-CE-3042
)
 v.) PERB Decision No. 888
)
 PALM SPRINGS UNIFIED SCHOOL)
 DISTRICT,) June 18, 1991
)
 Respondent.)
 _____)

Appearance: Harry Christopher Fieger, on his own behalf.
Before Hesse, Chairperson; Camilli and Carlyle, Members.

. DECISION AND ORDER

CARLYLE, Member: This case is before the Public Employment Relations Board (Board) on appeal by Harry Christopher Fieger of a Board agent's dismissal, attached hereto, of his charge that the Palm Springs Unified School District violated section 3543.5(a) of the Educational Employment Relations Act (EERA).¹

¹EERA is codified at Government Code section 3540 et seq. Section 3543.5 states, in pertinent part:

It shall be unlawful for a public school employer to do any of the following:

- (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. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

We have reviewed the dismissal and, finding it to be free of prejudicial error, adopt it as the decision of the Board itself,

The original and amended unfair practice charges in Case No. LA-CE-3042 are hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairperson Hesse and Member Camilli joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Boulevard, Suite 650
Los Angeles, CA 90010-2334
(213) 736-3127



March 22, 1991

R. A. Bender, Esq.

Re: DISMISSAL AND REFUSAL TO ISSUE COMPLAINT, Unfair Practice
Charge No. LA-CE-3042, Harry Christopher Fieger v. Palm
Springs Unified School District

Dear Mr. Bender:

I indicated to you in my attached letter dated March 1, 1991, that the above-referenced charge did not state a prima facie case. You were advised that if there were any factual inaccuracies or additional facts that would correct the deficiencies explained in that letter, you should amend the charge accordingly. You were further advised that unless you amended the charge to state a prima facie case, or withdrew it prior to March 15, 1991, the charge would be dismissed. I later extended that deadline.

On March 20, 1991, I received from Charging Party Fieger a First Amended Charge. The amended charge emphasizes that the reason the District gave for not promoting Charging Party was that he had taped conversations with his supervisor without the supervisor's knowledge or consent. The District told Charging Party that such taping was illegal, and the Union told him the same. All this took place on or before March 20, 1990. On October 25, 1990, Charging Party saw a newspaper article that led him to believe that such taping was actually legal.¹ Charging

¹The article may actually be somewhat misleading. It attributes to a California Highway Patrol officer a statement that "it is legal to tape record a conversation as long as one person in the conversation knows it is being taped." Penal Code section 632, however, makes it illegal to record a confidential communication "without the consent of all parties" (emphasis added). Courts have held that this means that even a party to a confidential communication cannot record it without the knowledge and consent of the other parties. See, e.g., Forest E. Olson, Inc. v. Superior Court (1976) 63 Cal.App.3d 188 [133 Cal.Rptr. 573]. Penal Code section 633 exempts California Highway Patrol officers from section 632.

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Party filed charges against both the District and the Union on November 21, 1990.

Based on the facts stated above, the amended charge still does not state a prima facie violation of the EERA within PERB's jurisdiction, for the reasons that follow.

As noted in my March 1 letter, unfair practice charges are subject to a six-month jurisdictional limitation. The six-month period commences when a charging party discovers the conduct constituting the unfair practice, not when he or she discovers the legal significance of that conduct. California State Employees' Association (1985) PERB Decision 546-S; Fairfield-Suisun Unified School District (1985) PERB Decision No. 547. If it were otherwise, the limitation period could be endlessly extended, so long as a charging party failed to consult an attorney or otherwise remained ignorant of the law.

This principle applies to the present charge. By March 20, 1990, over eight months before the charge was filed, Charging Party was apparently aware of all the actual conduct alleged to constitute an unfair practice. The only thing alleged to have happened after March 20, 1990, is that Charging Party saw a newspaper article which he believed gave him new information about the law. Such legal information is insufficient to recommence the running of the six-month limitation period. Cf., International Union of Operating Engineers, Local 501 (1986) PERB Decision No. 591-H.

The charge as amended is thus still outside PERB's jurisdiction. I am therefore dismissing the charge based on the facts and reasons contained in this letter and in my March 1 letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, 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 (California Code of Regulations, title 8, section 32635(a)). To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing (California

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Administrative Code, title 8, section 32135). Code of Civil Procedure section 1013 shall apply. 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 copies of a statement in opposition within twenty calendar days following the date of service of the appeal (California Code of Regulations, title 8, 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 California Code of Regulations, title 8, 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 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 (California Code of Regulations, title 8, 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**.

Sincerely,

JOHN W. SPITTLER
General Counsel

By _____
Thomas J. Allen
Regional Attorney

Attachment

cc: Harry Christopher Fieger
Ronald C. Ruud

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Boulevard, Suite 650
Los Angeles, CA 90010 2334
(213) 736-3127



March 1, 1991

R. A. Bender, Esq.

Re: WARNING LETTER, Unfair Practice Charge No. LA-CE-3042,
Harry Christopher Fieger v. Palm Springs Unified School
District

Dear Mr. Bender:

In the above-referenced charge, Harry Christopher Fieger (Fieger) alleges that the Palm Springs Unified School District (District) discriminated against him because of his union activity. This conduct is alleged to violate Government Code section 3543.5 of the Educational Employment Relations Act (EERA).

My investigation of this charge revealed the following facts.

The charge alleges that the District denied Fieger a promotion because of Fieger's union activity. Fieger was informed that he would not be promoted on March 12, 1990; another employee was promoted instead on March 13, 1990. The charge was filed on November 21, 1990.

Based on the facts stated above, the charge does not state a prima facie violation of the EERA within the jurisdiction of the Public Employment Relations Board (PERB), for the reasons that follow.

Government Code section 3541.5(a) of the EERA provides in relevant part that PERB "shall not . . . issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." PERB has ruled that this limitation is jurisdictional. California State University. San Diego (1989) PERB Decision No. 718-H. Because the present charge was filed on November 21, 1990, any alleged unfair practice occurring before May 21, 1990, is outside PERB's jurisdiction. It appears that any unfair practice alleged in the charge did occur before May 21, 1990.

For these reasons, the charge as presently written does not state a prima facie case. If there are any factual inaccuracies in this letter or any additional facts that would correct the deficiencies explained above, please amend the charge

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PERB unfair practice charge form clearly labeled First Amended Charge. contain all the facts and allegations you wish to make, and must be 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 March 15, 1991, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3127.

Sincerely,

Thomas J. Allen
Regional Attorney

cc: Harry Christopher Fieger