

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



TEHACHAPI ASSOCIATION OF TEACHERS,)
CTA/NEA,)
)
Charging Party,) Case No. LA-CE-3263
)
v.) PERB Decision No. 1024
)
TEHACHAPI UNIFIED SCHOOL DISTRICT,) November 4, 1993
)
Respondent.)
_____)

Appearance; Law Office of Lawrence B. Trygstad by Richard J. Schwab, Attorney, for Tehachapi Association of Teachers, CTA/NEA.

Before Blair, Chair; Caffrey and Carlyle, Members.

DECISION

BLAIR, Chair: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Tehachapi Association of Teachers, CTA/NEA (Association) of a Board agent's dismissal of its unfair practice charge. In the charge, the Association alleges that the Tehachapi Unified School District (District) violated the Educational Employment Relations Act (EERA) section 3543.5(a), (b) and (c):¹ by changing policies

¹EERA is codified at Government Code section 3540 et seq. EERA 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.

and practices set forth in the contractual grievance procedure; by discriminating against a particular teacher for engaging in protected activity; and thereby interfering with the Association's right to represent its members. We find that the unfair practice charge was untimely filed and therefore must be dismissed.

DISCUSSION

The Association's charge, which was filed on December 21, 1992, alleged that the District engaged in a series of actions designed to discriminate against Terri Switzer (Switzer), a teacher at the District's junior high school. Switzer had filed a number of grievances. The charge alleged that, as a consequence of Switzer filing the grievances, the District took several adverse actions against her, including refusing to honor her request to be transferred from the junior high school to another school. The charge further alleged that once Switzer was eventually transferred from the junior high school, the District issued Switzer a job performance evaluation based on false and unsubstantiated information rather than on observations of her teaching. The evaluation recommended her return to the junior high school.

The Association then filed a grievance based on Switzer's evaluation and her transfer back to the junior high school. The

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

District is alleged to have stated that it was not interested in resolving the grievance, but only wanted a transcript which it could use in dismissing her.

The Association alleged that the District was unwilling to resolve grievances and wanted them to go directly to arbitration with the purpose of increasing the cost to the Association.

However, the charge is unclear as to when the alleged unlawful conduct occurred. The only dates included in the charge refer to a threat made to Switzer by the superintendent "early in the 1990-91 school year," a conference which occurred during the "summer of 1991," a violation of a mediation agreement by the vice principal prior to March 1992, and grievances which were filed "thereafter." The charge contains no statement which clearly alleges that any unlawful conduct occurred on or after June 21, 1992.

In order to state a prima facie case a charging party must allege and ultimately establish that the conduct complained of either occurred or was discovered within the six-month period immediately preceding the filing of the charge. (San Dieguito Union High School District (1982) PERB Decision No. 194.) EERA section 3541.5 states, in relevant part:

(a) Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not do either of the following:

(1) 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.

The charge was filed on December 21, 1992. In order for it to be timely, any alleged unfair practice must have occurred during the six-month statutory period which began on June 21, 1992.

The Board, in California State Employees Association (Mitchell) (1993) PERB Decision No. 969-S, upheld the Board agent's warning letter which put the burden on the charging party to supply sufficient facts (dates) to show that the charge was timely filed.

In the charge, the Association did not supply dates which allow the Board to conclude that the charge was timely filed. The Association was informed of this deficiency in the Board agent's warning which stated that PERB could not issue a complaint unless that deficiency was addressed in an amended charge. The Association did not file an amended charge. Therefore, because the Association has failed to meet its burden of supplying sufficient facts to show that the alleged unlawful conduct occurred within letter
six months of the filing date, we must dismiss the charge as untimely._____

ORDER

The unfair practice charge in Case No. LA-CE-3263 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Caffrey and Carlyle joined in this Decision.