

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ROBERT EARL WILLIAMSON,
JAMES YOUNG GRAYSON,

Charging Parties,
APPELLANTS,

v.

VISTA UNIFIED SCHOOL DISTRICT,
Respondent.

Case No. LA-CE-201

PERB Order No. Ad-43

Administrative Appeal

July 19, 1978

Appearances: Robert Earl Williamson and James Young Grayson, for themselves; William F. Kay, Attorney (Whitmore & Kay) for Vista Unified School District.

Before Gluck, Chairperson; Cossack Twohey and Gonzales, Members.

OPINION

This is an administrative appeal by Robert Earl Williamson and James Young Grayson (hereafter Charging Parties) from a decision by Public Employment Relations Board (hereafter Board) hearing officer David Schlossberg dismissing Charging Parties' unfair practice charge because it was untimely amended. We reverse the hearing officer's determination that the amendment was untimely filed. We remand the case to the general counsel for a determination on its merits.

FACTS

On November 18, 1977 Charging Parties filed an unfair practice charge against Vista Unified School District (hereafter District).

The charge alleged that the District had violated section 3543.5(a) of the Educational Employment Relations Act (hereafter EERA).¹

The charge alleges that the District violated section 3543.5(a) by interfering with Charging Parties' right to present grievances to the District. Charging Parties rely on section 3543, which provides in pertinent part, that:

...Any employee may at any time present grievances to his employer, and have such grievances adjusted....

Pursuant to an order to particularize issued by the hearing officer on December 20, 1977, Charging Parties submitted a bill of particulars on January 5, 1978. The hearing officer dismissed the charge on January 26, 1978. In the dismissal he informed Charging Parties of their right to either amend the charge or appeal the dismissal to the Board itself. The first sentence of the notice of dismissal with leave to amend stated:

NOTICE IS HEREBY GIVEN that the above charge is dismissed with leave to amend within ten (10) calendar days.

Charging Parties deposited an amended charge in the mail on February 7, 1978. The amended charge was received in the Los Angeles Regional Office on February 8, 1978. On February 15, 1978 the hearing officer informed the parties that he had closed the case because there had been no appeal of the dismissal to the Board itself or timely amended charge. The hearing officer rejected the

¹The Educational Employment Relations Act is codified at Gov. Code sec. 3540 et seq. All further references are to the Government Code unless otherwise noted.

amended charge as untimely, stating that the notice of dismissal had allowed:

Ten (10) calendar days in which to either amend the unfair practice charge or file an appeal with the Board itself. Because February 5, 1978 was a Sunday, the deadline for filing the amendment or appeal was February 6, 1978.

Charging Parties have appealed this rejection. The appeal notes that the notice of dismissal gave the Charging Parties "ten calendar days" to amend. They received the notice on January 28, 1978. Ten days later, February 7, they deposited their amended charge in the mail.

DISCUSSION

The notice of dismissal with leave to amend did not tell Charging Parties when the ten calendar days within which they could amend their charge began to run. The hearing officer counted the ten days from the date of service of the notice of dismissal. Charging Parties interpreted the notice of dismissal as providing that the ten calendar days in which to amend began to run the day after they received the notice of dismissal. In view of the lack of clear and unequivocal notice to Charging Parties of when the time within which they could amend their charge began to run, we reverse the hearing officer's rejection of the amended charge and remand the case to the general counsel for a determination of whether or not the amended charge states a prima facie case.

ORDER

The Public Employment Relations Board orders that:

(1) The hearing officer's rejection of the amended unfair practice charge filed by Robert Earl Williamson and James Young Grayson

against Vista Unified School District is reversed.

(2) The amended unfair practice charge is remanded to the general counsel for a determination of whether or not the amended charge states a prima facie case.

~~By: Jerilou Cossack Twohey, Member / Harry Gluck, Chairperson~~

~~Raymond J. Gonzales, Member~~

PUBLIC EMPLOYMENT RELATIONS BOARD
OF THE STATE OF CALIFORNIA

ROBERT EARL WILLIAMSON,)
JAMES YOUNG GRAYSON,)
)
Petitioners,)
)
vs.)
)
VISTA UNIFIED SCHOOL DISTRICT,)
)
Respondent,)
)

Case No. LA-CE-201-77/78

NOTICE OF DISMISSAL
WITH LEAVE TO AMEND

NOTICE IS HEREBY GIVEN that the above charge is dismissed with leave to amend within ten (10) calendar days. The dismissal is based on the advice of the General Counsel, on the following grounds.

The allegations of the unfair practice charge as set out in charging parties' initial charge and their response to the hearing officer's Order to Particularize are insufficient to establish a prima facie violation of Section 3543.5(a) of the Educational Employment Relations Act (EERA).¹

¹ Gov't Code Sec. 3540, et seq.

The charge, as particularized, alleges that respondent has violated the collective bargaining agreement between the respondent and the exclusive representative with respect to certain provisions relating to class size and placement on the salary schedule. It is also alleged that respondent interfered with the right of charging parties to file a grievance in that the supporting papers accompanying their grievances were not delivered by the superintendent (or other unknown persons) to the Board of Trustees.

Section 3541.5(b) of the EERA states:

The board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of such a agreement that would not also constitute an unfair practice under this chapter.

Thus, there must be independent grounds for finding that an unfair practice has occurred other than that there was a violation of a contract. The only right or obligation established by the EERA with respect to class size or salary is that these are mandatory subjects of meeting and negotiating between the exclusive representative and respondent. No specific right is held by charging parties with respect to these two topics.

Nor does the EERA establish an independent right for the charging parties to file a grievance with respondent. Section 3543 states, in part, as follows:

Any employee may at any time present grievances to his employer, and have such grievances adjusted, without the intervention of the exclusive representative, as long as the adjustment is reached prior to arbitration...

However, this language does not create, as charging parties contend, a right to file grievances or even a right to utilize the grievance procedure set out in a written agreement. What is guaranteed is that if the individual employee desires to utilize the existing grievance procedure, he is not required to obtain the concurrence of the exclusive representative (prior to the arbitration stage). However, the charge does not allege that respondent failed to process the grievance because of an objection by the exclusive representative. Rather, it alleges merely a denial of the right to utilize existing grievance procedures. This is a matter of contractual enforcement and not an action which constitutes an unfair practice charge under the EERA.

The above action is taken pursuant to PERB Regulation 35007(a). If charging parties choose not to amend the charge, they may obtain review of the dismissal by filing an appeal to the Board itself within ten (10) calendar days after service of this Notice of Dismissal with Leave to Amend. Such appeal must be in writing, signed by charging parties or their agent, and contain the facts and arguments upon which the appeal is based. PERB Regulation 35007(b). A copy of any appeal filed with the Board itself must

concurrently be served by the charging parties on respondent so that respondent will have an opportunity to exercise its rights under PERB Regulation 35007(c). See Olson vs. Manteca Unified School District, EERB Decision No. 21, August 5, 1977.

DATED: January 26, 1978

WILLIAM P. SMITH

~~David Schlossberg
Hearing Officer~~