

STATE OF CALIFORNIA
DECISION OF THE EDUCATIONAL
EMPLOYMENT RELATIONS BOARD

CHARLES PETRONE,)		
Charging Party)		
)	Case Nos.	LA-CE-45
and)		LA-CE-46
PASADENA FEDERATION OF TEACHERS,)		
AFT, LOCAL 1050, AFL-CIO,)	EERB Decision No.	16
Charging Party)		
)		
and)		
)		
PASADENA UNIFIED SCHOOL DISTRICT,)		
Respondent)		
)		
)		

Appearances: Charles Petrone representing himself; Saul Glickman for the Pasadena Federation of Teachers, AFT, Local 1050, AFL-CIO.

Before: Alleyne, Chairman; Gonzales and Cossack, Members.

OPINION

The charging parties appeal from the dismissal of two unfair practice charges by the General Counsel.

On November 30, 1976, identical unfair practice charges were filed by an individual employee, Charles Petrone, and by the Pasadena Federation of Teachers, AFT, Local 1050, AFL-CIO, against the Pasadena Unified School District (District). The General Counsel dismissed each charge on the same grounds. The parties filed identical appeals. Since the two charges are based on the same facts and procedural history, the Board consolidates them for the purpose of this appeal. For the purpose of ruling on this appeal of the dismissals, we assume that the essential facts alleged in the charge are true.¹

¹ San Juan Federation of Teachers, EERB Decision No. 12, March 10, 1977, at page 4.

The charges against the District allege the violation of Government Code Section 3543.5(a) and (b)² in that the District refuses to remove certain letters from the personnel files of some teachers employed by the District.

The charges state that on June 4, 1974, Petrone and certain other District teachers took unpaid personal necessity leave for the purpose of attending a morning meeting of the District's governing board. The school board was meeting to consider the adoption of a policy concerning the effect a concerted work stoppage by certificated District employees would have on contractual relations between the District and such employees. Subsequent to the meeting, the school board caused the Superintendent to send two letters, dated November 18, 1974, to each of the teachers who had attended the meeting. Each letter indicated it was being sent at the direction of the school board. The District placed copies of the letters in the teachers' personnel files.

The first letter stated that the teacher was absent from work on June 4, 1974 "when a concerted work-stoppage was being conducted by various employees of the School District;" that the work stoppage was "both unprofessional conduct and a violation of District policies and State Law," that a copy of the letter would be placed in the teacher's personnel file unless the teacher submitted a valid explanation for the absence other than participation in the work stoppage; and finally, that "any repeat of this type of action will constitute persistent violations...and may subject you to dismissal..."

The second letter notified the teacher that "the unprofessional nature of [his] conduct in the performance of [his] teaching assignments and duties has been of concern to the District" because the teacher participated in an illegal work stoppage and "without authorization or excuse, withheld [his] services from the pupils and citizens of the...District in violation of [his] contractual obligations to provide such services." The letter warned that "any

² Gov. Code Sec. 3543.5(a) and (b) provides:

It shall be unlawful for a public school employer to:

(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.

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

repetition" of the "unprofessional conduct can only be viewed with the utmost concern by the District."

The letters still remain in the personnel files of the teachers who were absent on June 4, 1975. The charging parties allege that;

The charges contained in these letters are not true... they were made as a reprisal for the concerted opposition by the teachers to the Board policy, and as an attempt to frighten District employees into remaining silent on such issues, in the future. The presence of these letters in the personnel files of the teachers imposes a continuing threat of dismissal and represents a continuing injury to the teachers...these letters should be removed from the files.

The General Counsel dismissed the charges with leave to amend. The dismissal was on the ground that "the facts alleged fail to constitute an unfair practice charge...because the actions occurred prior to the effective date of the appropriate sections of the Educational Employment Relations Act."

On appeal, however, the charging parties elaborate on the theory that the District is engaging in a continuing violation of Section 3543.5(a) and (b) by failing to remove the letters from the personnel files:

The charging parties concede that some of the actions giving rise to the present dispute occurred before the Educational Employment Relations Act...was a reality. However, they do not base their charges on those actions. The gravamen of the complaint is that present conditions brought about by some of those actions constitute a present and continuing interference with the teachers rights under the EERA.

The presence of the letters in the personnel files at this time, reasonably leads the teachers to fear dismissal should they exercise rights guaranteed to them by Section 3543.

The Board agrees that the charges were correctly dismissed on the basis that all alleged unlawful conduct of the respondent occurred prior to April 1, 1976, the effective date of Section 3543.5,³ and therefore that conduct cannot form the basis of an unfair practice charge. See U.S. Postal- Service, 200 NLRB 413,

³ While Sec. 3549.3 originally provided an effective date of July 1, 1976, Senate Bill No. 1471, Chapter 421 of the Statutes of 1976, amended Sec. 3549.3 to retroactively change the effective date to April 1, 1976.

81 LRRM 1533 (1972), wherein the National Labor Relations Board (NLRB) dismissed a complaint because the alleged unlawful conduct occurred prior to the date the NLRB assumed jurisdiction over Postal Service employees under the Postal Reorganization Act.

The Board does not find a current continuing violation of Section 3543.5 based upon the District's failure to remove the letters from the personnel files after April 1, 1976. All alleged unlawful conduct of the respondent occurred in 1974. A claim based thereon cannot continue without end. See NLRB v, Pennwoven, 194 F.2d 521,29 LRRM 2307 (3d Cir. 1952), involving the unlawful discharge of employees. In that case, a violation was held to occur only at the time of the discharge and not to continue thereafter during the employee's term of unemployment or at the time of the employee's request for reinstatement.

Having found no violation of Section 3543.5, the Board hereby sustains the General Counsel's dismissal of the charges.

ORDER

The General Counsels dismissal of the unfair practice charges filed by Charles Petrone and the Pasadena Federation of Teachers, AFT, Local 1050, AFL-CIO, against the Pasadena Unified School District is sustained.

By: Raymond J. Gonzales, Member

Reginald Alleyne, Chairman

Jer^ou H. Cossack, Member

Dated: May 12, 1977