STATE OF CALIFORNIA
DECISION OF THE EDUCATIONAL
EMPLOYMENT RELATIONS BOARD

EL RANCHO UNIFIED SCHOOL DISTRICT, Charging Party, vs. EL RANCHO FEDERATION OF TEACHERS, LOCAL 3467, AFofT, AFL-CIO; and EL RANCHO EDUCATION ASSOCIATION, CTA/NEA, Respondents.	)	Case No. LA-CO-18 Case No. LA-CO-18 EERB Decision No. 45 December 30, 1977

The Charging Party appeals the General Counsel's dismissal of one allegation of its charge.

On March 31, 1977 El Rancho Unified School District (District) filed a charge against El Rancho Federation of Teachers, Local 3467, AFT/AFL-CIO (Federation) and El Rancho Education Association, CTA/NEA (Association) alleging that they had violated Sections 3543.6(a) and (b) of the Educational Employment Relations Act (EERA).[1] The charge alleges the following as violative of the EERA:

1. Engaging in conduct which includes threats, coercion and intimidation of employees of

[1]Gov. Code Secs. 3543.6(a) and (b) provide:

> 3543.6. It shall be unlawful for an employee organization to:
>
> (a) Cause or attempt to cause a public school employer to violate Section 3543.5.
>
> (b) 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.

Charging Party [District] while Respondents were engaged in an illegal work stoppage for the period beginning 9-13-76 and ending 10-17-76 thereby interfering with employees' rights guaranteed them under Section 3543 of the Act; and

2. Demanding several times and again on 1-24-77 that Charging Party meet and negotiate despite the fact that no employee organization has been recognized as the exclusive representative in any unit of certificated employees thereby attempting to cause Charging Party to violate Section 3543.5 of the Act by interfering with employees' rights guaranteed them under Section 3543 of the Act.

On June 15, 1977 the General Counsel dismissed the first allegation of the charge without leave to amend on the grounds that the District did not have standing to file an unfair practice charge which seeks to vindicate and protect the rights of its employees. On July 27, 1977 the District appealed the dismissal contending that it had standing and that, at a minimum, it should have been allowed leave to amend the charge.

We agree with the District that it has standing to file its charge and, accordingly, remand this case to the General Counsel for a hearing.[2]

The hearing officer concluded that the District, as contrasted to its employees, could not have been aggrieved by the alleged conduct of the Association and Federation. We disagree.

An employer necessarily has an interest in whether or not its employees have been subjected to illegal threats, coercion or intimidation. Certainly the employer has an interest in maintaining

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[2] For the purpose of ruling on the validity of the dismissal of an unfair practice charge for failure to state a case on its face, we assume the essential facts alleged in the charge are true. See San Juan Unified School District, EERB Decision No. 12, March 10, 1977.

a peaceful and harmonious atmosphere conducive to performing its* function. Equally certain is that unlawful threats, coercion or intimidation of employees is disruptive.

The hearing officer incorrectly construed the procedures adopted by the Board for processing unfair practice charges. While our procedure for processing unfair practice allegations is substantially different from that of the NLRB, nevertheless it is equally true of both procedures that the charge is not proof. Rather, it merely sets in motion the procedure of an inquiry. It is true that the Board's Rules and Regulations require a charging party to allege the facts upon which the charge is based and to bear the burden of proving the charge by a preponderance of the evidence. However, the Rules and Regulations also permit the dismissal of a charge prior to a formal hearing, permit the preparation and service on all parties of a pre-hearing memorandum containing a summary of the proceedings to date and the issues to be decided at the formal hearing, permit the conduct of an informal hearing in order to, among other things, clarify the issues raised by the charge, permit amendment of the charge, and permit particularization by the charging party or respondent. The construction of the Board's Rules and Regulations given by the hearing officer is contrary to the statute itself, which distinguishes between a charge and a complaint 4/.

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[3] See NLRB v. Indiana and Michigan Electric Company, 318 U.S. 9, 17-18; Television and Radio Broadcasting Studio Employees, Local 805 (Radio and Television Division of Triangle Publications, Inc.), 135 NLRB 632, 49 LRRM 1541 (1962).

4/ The EERA differentiates between unfair practice charges, which are filed by the parties, and unfair practice complaints, which are issued by the EERB. See Gov. Code Secs. 3541.3(i), 3541.3(j), 3541.5 and 3541.5(a).

Accordingly, we reverse the order of dismissal and remand the case to the General Counsel for a hearing.

ORDER

The hearing officer's dismissal of the first allegation of the unfair practice charge filed by El Rancho Unified School District against El Rancho Federation of Teachers, Local 3467, AFT, AFL-CIO and El Rancho Education Association, CTA/NEA is reversed. The unfair practice charge is remanded to the General Counsel for settlement or hearing.

Jerilou H. Cossack, Member

Reginald Alleyne, Chairman, concurring:

I concur in the order and concur in the decision, but only up to and including the paragraph on pages 2 and 3 ending with the words ". . . employees is disruptive." I agree with none of the remainder of the decision, which raises a non-existent issue going beyond the single question of whether the charging party here had standing to file the charge.

Reginald Alleyne, Chairman

Raymond J. Gonzales, Member, dissenting:

I disagree with my colleagues that the hearing officer improperly

sustained the Association's motion to dismiss.1/ In my view, they totally mischaracterize the decision of the hearing officer on the issue of standing. The hearing officer never concluded that the District "could not have been aggrieved" by the alleged conduct of the respondents. He merely held, and I am in accord, that on the facts as alleged, the District has failed to demonstrate that it is the real party in interest in this case and therefore lacks standing.2/[2]

At issue is the language found in paragraph 1 of the District's unfair practice charge stating that the respondents engaged

> "...in conduct which includes threats, coercion and intimidation of employees of Charging Party [District] while Respondents were engaging in an illegal work stoppage for the period beginning 9-13-76 and ending 10-17-76 thereby interfering with employees' rights guaranteed them under Section 3543 of the Act ...."

This language, on its face, only speaks to alleged injury upon the employees of the District. There is nothing stated to remotely suggest that the District itself has suffered by the alleged conduct of the respondents or that it otherwise has a direct interest in the matter. This is not to say that the District could not have been aggrieved in some manner assuming the respondents did so engage in improper conduct, or that it lacks any interest in the case. However, I think it ill-advised to hypothesize, as apparently my colleagues

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[2]Only the El Rancho Education Association filed a motion to dismiss on the issue of standing.

[2]Klopstock v. Superior Court, 17 Cal. 2d 13, 17-19 (1941); Parker v. Bowron, 40 Cal. 2d 344, 351 (1953); Oakland Municipal Improvement League v. Oakland, 23 Cal. App. 3d 165, 170 (1972); Friendly Village Community Assn. Inc. v. Silva & Hill Construction Co., 31 Cal. App. 3d 220, 224 (1973); 3 Witkin, Cal, Procedure (2d ed. 1971) Pleading, Sec. 760, p. 2379 and Sec. 814, p. 2424.

choose to do, as to the District's interest or injury. First, it may be that the District has not been aggrieved in any fashion, and, as a matter of law, is only claiming the right to represent its employees in an unfair practice proceeding on the charge alleged.[3] Second, it may be that the District can appropriately demonstrate standing, but it would be based on reasons other than those supposed by my colleagues. For example, looking at the language found in Paragraph "1", specifically "thereby interfering with employees' rights guaranteed them under Section 3543 of the Act...,"[4] it is conceivable that, depending on the facts, only the District's interest in negotiating with an exclusive representative chosen by an uncoerced majority of its employees may have been adversely affected. Third, if given the opportunity to cure its original charge, the District might substitute the proper charging party or parties rather than make a showing of standing.[5]

Hence, aside from the general purpose behind the standing requirement, to avoid litigation intended solely for harassment, fairness

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[3]Indeed, in its Appeal of Order Granting Motion to Dismiss Unfair Practice Charge, the thrust of the District's argument is its right to intercede, for various reasons, on behalf of the employees in pursuing charges involving intimidation of the employees.

[4]Gov. Code sec. 3543 provides in pertinent part: Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Public school employees shall also have the right to refuse to join or participate in the activities of employee organizations ....

[5]Klopstock, supra, at p. 21.

to the respondents in knowing exactly whom and what they must defend against is a prevailing consideration. The charge itself thus assumes particular importance since it sets forth the basic facts the charging party must prove by a preponderance of the evidence.[6] 6

Despite my views on the standing issue, I do think the hearing officer erred in not allowing the charging party opportunity to amend its original charge. It is not evident in the hearing officer's decision why he did not allow leave to amend, although it may have been that at the time of oral argument on this issue, June 2, 1977, the District made it obvious to the hearing officer that it could not cure its original charge. However, for me to speculate regarding possible valid grounds for the hearing officer's failure to grant leave to amend would be as inappropriate as the majority's speculation over possible allegations to cure the patently defective pleading of the charging party. In any event, the hearing officer must stand by his decision and his failure to articulate why no leave to amend was allowed prevents one from assuming that his decision was correct on this point. As stated by the California Supreme Court in Harman v. City and County of San Francisco:

> Indeed, a general demurrer to a complaint should not be sustained without leave to amend if the complaint raises the reasonable possibility that its defects can be cured by amendment. Thus the court in Lemoge Electric v. County of San Mateo (1956) 46 Cal. 2d 659, 664, (297 P. 2d 638), explains: In the furtherance of justice great liberality should be exercised in permitting a plaintiff to amend his complaint, and it ordinarily constitutes an abuse of discretion to sustain a demurrer without leave to amend if there is a reasonable possibility that the defect can be cured by amendment.[7]

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[6] Cal. Admin. Code tit. 8, sec. 35027.

[7] Harman v. City and County of San Francisco, 7 Cal. 3d 150, 157 (1972).

It is conceivable that given the discussion of my colleagues, the District may be able to establish a prima facie case, by amending its original charge or, at the very least, the proper charging party might be substituted for the District.

Concerning that portion of Member Cossack's opinion regarding the hearing officer incorrectly construing the procedures adopted by the Board for the processing of unfair practice charges, I agree with Chairman Alleyne that her discussion is unwarranted as going beyond the scope of the standing issue.

Raymond J. Gonzales J. Member

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ORDER

EL RANCHO UNIFIED SCHOOL DISTRICT, Employer,	)	Case No. LA-CO-18
and	)	EERB Decision No. 45
EL RANCHO FEDERATION OF TEACHERS, LOCAL 3467, AFofT, AFL-CIO; and EL RANCHO EDUCATION ASSOCIATION, CTA/NEA, Respondents.	)	December 30, 1977

The Educational Employment Relations Board directs that:

The hearing officer's dismissal of the first allegation of the unfair practice charge filed by El Rancho Unified School District against El Rancho Federation of Teachers, Local 3467, AFT, AFL-CIO and El Rancho Education Association, CTA/NEA is reversed. The unfair practice charge is remanded to the General Counsel for settlement or hearing.

Educational Employment Relations Board
Stephen Barber, Executive Assistant

by

William P. Smith, General Counsel