STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

JULES KIMMETT, Charging Party, v. LOS ANGELES COMMUNITY COLLEGE DISTRICT, Respondent.	)	Case No. LA-CE-1365 PERB Decision No. 309 May 18, 1983

Appearances: Jules Kimmett representing himself; Mary L. Dowell, Attorney for Los Angeles Community College District.

Before Jaeger, Morgenstern and Burt, Members.

DECISION

MORGENSTERN, Member: This matter is before the Public Employment Relations Board (PERB or Board) on appeal from an administrative decision of the Executive Assistant to the Board, at his initiative. The Executive Assistant dismissed as untimely an appeal by Jules Kimmett (Charging Party) from an earlier administrative decision disallowing his appeal from an administrative law judge's (ALJ) Refusal to Issue a Complaint and Dismissal of Charge With Leave to Amend. That attempted appeal was found to be insufficient under the requirements for an appeal pursuant to PERB regulations.[1] The charge was originally dismissed for failure to state a prima facie case

[1]PERB regulations are codified at California Administrative Code, title 8, section 31001 et seq.

and for lack of standing to bring a charge under subsection 3543.5(c) of the Educational Employment Relations Act (EERA).[2]

The Board has reviewed the entire record in this matter and finds that the action of the administrative law judge, in refusing to issue a complaint for failure to state a prima facie case, was free from error.[3] Similarly, the actions of the Executive Assistant to the Board disallowing both the appeal from the Refusal to Issue a Complaint and the subsequent appeal of that administrative decision were free from error. The Board, therefore, dismisses the appeal and the underlying charge.

DISCUSSION

Refusal to Issue Complaint and Dismissal of Charge

PERB regulation 32615(a)(5) requires a charging party to provide a clear and concise statement of the facts and conduct

---

[2]The EERA is codified at Government Code section 3540 et seq. All statutory references are to the Government Code unless otherwise specified.

Section 3543.5 provides in pertinent part:

> It shall be unlawful for a public school employer to:
>
> . . . . . .
>
> (c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

[3]Because the charge was properly dismissed on this ground, we do not consider whether the ALJ erred in holding that Kimmett lacked standing to bring the charge. See South San Francisco Unified School District (1/15/80) PERB Decision No. 112.

alleged to constitute an unfair practice. To state a prima facie violation of subsection 3543.5(c), the charging party must allege specific instances of employer behavior which, if proved, would constitute bad faith negotiation or a refusal to bargain.

Kimmett's charge alleged that the Los Angeles Community College District (District) proposed that 1981-82 salaries remain the same as for fiscal year 1980-81.[4] Assuming that the essential facts alleged in the charge are true (San Juan Unified School District (3/10/77) EERB Decision No. 12),[5] neither this charge nor Kimmett's responses to two particularization orders indicates how such a proposal is a refusal to bargain in good faith. Though Kimmett asserted in response to the first particularization order that the exclusive representative requested negotiations on the subject

---

[4]The original charge states in its entirety as follows:

> On April 22, 1981 at the regular Board of Trustees Los Angeles Community College District agenda . . . '1981-82 Salary Proposal salary for all employees in Unit 2 shall remain the same for the fiscal year 1981-82 as that established for the fiscal year 1980-81.'
>
> From the text of 3543.5(c) refuse or fail to meet and negotiate in good faith with an exclusive representative.

[5]Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board.

of salaries for 1981-82, he alleged no actions on the part of the District which reflect a refusal to enter into such negotiations. Merely citing an employer's salary offer, without also alleging a refusal to negotiate on the matter, does not suffice.

In his response to the first particularization order, Kimmett additionally alleged that the District's salary proposal had not been sunshined, arguably a violation of the public notice requirements of section 3547.[6] In Kimmett v.

---

[6]Section 3547 provides:

> (a) All initial proposals of exclusive representatives and of public school employers, which relate to matters within the scope of representation, shall be presented at a public meeting of the public school employer and thereafter shall be public records.
>
> (b) Meeting and negotiating shall not take place on any proposal until a reasonable time has elapsed after the submission of the proposal to enable the public to become informed and the public has the opportunity to express itself regarding the proposal at a meeting of the public school employer.
>
> (c) After the public has had the opportunity to express itself, the public school employer shall, at a meeting which is open to the public, adopt its initial proposal.
>
> (d) New subjects of meeting and negotiating arising after the presentation of initial proposals shall be made public within 24 hours. If a vote is taken on such subject by the public school employer, the vote

Los Angeles Community College District (6/24/81) PERB Decision No. 167, the Board ruled that charges concerning public notice must be filed as public notice complaints pursuant to the expedited proceedings provided by PERB regulations 32900-32965 (formerly sections 37000-37100) and not as unfair practice charges. Despite the fact that Kimmett has properly filed public notice complaints on at least two previous occasions (Decision No. 167, supra, and Kimmett v. Los Angeles Community College District (3/3/81) PERB Decision No. 158), he fails to mention either section 3547 or public notice requirements here.

Therefore, the allegation in Kimmett's particularization that the District's salary proposal was not sunshined does not cure the deficiency in his charge. As the facts alleged do not constitute a prima facie violation of subsection 3543.5(c), the ALJ properly refused to issue a complaint and dismissed the charge with leave to amend.

> thereon by each member voting shall also be made public within 24 hours.
>
> (e) The board may adopt regulations for the purpose of implementing this section, which are consistent with the intent of the section; namely that the public be informed of the issues that are being negotiated upon and have full opportunity to express their views on the issues to the public school employer, and to know of the positions of their elected representatives.

Appeal of Dismissal

An appeal of a Refusal to Issue a Complaint must contain the facts and arguments upon which the appeal is based.[7] The Executive Assistant treated a document submitted by Kimmett on March 14, 1982 as an appeal of the Refusal to Issue a Complaint, though it was not labeled as such and was primarily a diatribe against PERB's Chief Administrative Law Judge.

The only part of that document relevant to an appeal was the assertion that Charging Party's original charge contained facts sufficient to state a prima facie case. Merely asserting that sufficient facts were alleged in the original charge without explaining why they constitute a prima facie case fails to satisfy the requirements for an appeal.

---

[7]At all times relevant to this proceeding, regulation 32630(b) provided:

> The charging party may either (1) file an amended charge, provided leave to amend is granted, within 20 days following the date of service of the refusal to issue a complaint or (2) file an original and four copies of an appeal of the refusal with the Board itself within 20 days following service. The appeal shall be filed with the Executive Assistant to the Board and shall be in writing, signed by the party or its agent, and contain the facts and arguments upon which the appeal is based. Service and proof of service of the appeal pursuant to section 32140 are required. (Subsequently amended, effective September 20, 1982.)

Charging Party also failed to properly serve his March 14 "appeal," since the document was not served by a non-party and no copy was sent to the opposing party.[8]

---

[8]Regulation 32140 provides, in pertinent part:

> (a) All documents referred to in these regulations requiring "service" or required to be accompanied by "proof of service," except subpoenas, shall be considered "served" by the Board or a party when personally delivered or deposited in the first-class mail properly addressed. All documents required to be served shall include a "proof of service" affidavit or declaration signed under penalty of perjury which meets the requirements of section 1013(a) of the Code of Civil Procedure or which contains the following information:
>
> > I declare that I am employed or reside in the County of _____, California. I am over the age of 18 years and not a party to the within entitled cause; my address is _____. On _____ I (personally) served the _____ on the _____ (by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the U.S. Mail at _____ addressed) as follows: . . .
>
> . . . . . .
>
> (c) Whenever "service" is required by these regulations, service shall be on all parties to the proceeding and shall be concurrent with the filing in question. (Emphasis added.)

We, therefore, affirm the Executive Assistant's ruling that the document submitted by Charging Party on March 14, 1980 was insufficient to constitute an appeal.

Appeal of Administrative Decision

By letter dated and served on March 19, 1982, the Executive Assistant informed Charging Party of his decision to disallow the "appeal" and of his right to appeal that decision to the Board no later than the close of business on March 29, 1982. Because the Executive Assistant's ruling was an administrative decision,[9] the 10-day period specified for filing a

---

[9]At all relevant times, regulation 32350 provided, in pertinent part:

> (a) An administrative decision is any determination made by the Executive Director, a Regional Director, the General Counsel, the Chief Administrative Law Judge, or the Executive Assistant to the Board other than a refusal to issue a complaint in an unfair practice case pursuant to section 32630, or a decision issued pursuant to section 32654(e) or a decision which results from the conduct of a formal hearing. Any administrative decision issued by an agent of the above listed staff officers shall be considered as issued by the Executive Director, Regional Director, General Counsel, Chief Administrative Law Judge, or Executive Assistant to the Board. (Subsequently amended, effective September 20, 1982.)

Though regulation 32350(a) defines administrative decisions as excluding a refusal to issue a complaint pursuant to regulation 32630, regulation 32630 covers only

subsequent administrative appeal was proper.[10] Kimmett's appeal was not received until Wednesday, March 31, 1982, and was, therefore, untimely filed.[11] There is no record of Kimmett's having requested an extension of time to file the appeal. While a late filing may be excused in the discretion of the Board under extraordinary circumstances,[12] no such circumstances are shown here.

---

the first appeal to the Board. Subsequent appeals are properly categorized as administrative decisions.

[10]At all relevant times, regulation 32360 provided, in pertinent part:

> (b) The appeal shall be filed with the Executive Assistant to the Board at the headquarters office within 10 days following the date of service of the decision or letter of determination. (Subsequently amended, effective September 20, 1982.)

[11]At all relevant times, regulation 32135 provided:

> All documents shall be considered "filed" by a party when actually received by the proper recipient before the close of business on the last date set for filing. (Subsequently amended, effective September 20, 1982.)

[12]At all relevant times, regulation 32133 provided:

> A late filing may be excused in the discretion of the Board only under extraordinary circumstances. (Subsequently amended and renumbered as regulation 32136, effective September 20, 1982.)

In summary, the ALJ correctly found that the allegations of Kimmett's charge failed to state a prima facie case. Therefore, the Refusal to Issue a Complaint and Dismissal With Leave to Amend was proper. Kimmett's March 14, 1982 document, which was generously treated as an attempted appeal of the Refusal to Issue a Complaint, clearly failed to meet the content and service requirements of an appeal and was properly disallowed. In view of the relevant procedural rules, Kimmett's March 27, 1982 appeal was, indeed, untimely filed. Kimmett was given ample opportunity to perfect his charge, and the administration of his case has been carried out free of error.

ORDER

After a review of the entire record in this case, the Public Employment Relations Board ORDERS that the Charging Party's appeal from the decisions of the Executive Assistant to the Board is hereby DENIED and the unfair practice charge in Case No. LA-CE-1365 is hereby DISMISSED without leave to amend.

Members Jaeger and Burt joined in this Decision.