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-1877 PERB Decision No. 417 October 18, 1984

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

Before Jaeger, Morgenstern and Burt, Members.

DECISION

JAEGER, Member: Jules Kimmett appeals the attached dismissal of his charge that the Los Angeles Community College District (District) violated subsections 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA)[1] by refusing him entrance to meetings between the District and certain employees concerning seniority and bumping rights of employees facing layoff.

The charge asserts that Service Employees International Union, Local 99 (Local 99 or Union), the employees' exclusive representative, and the District had agreed that all Union

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

representatives would be entitled to attend such meetings but that Kimmett was barred by management representatives from such a meeting even though he informed them of the parties' agreement.

During the course of a regional attorney's investigation of the charge, it was revealed that the District and Union had agreed that these meetings would be considered as extensions of current bargaining sessions which included, inter alia, the effects of prospective layoffs. The District admitted that Kimmett, as a member of the Union bargaining committee, was entitled to attend the meetings, attributed the denial of access to a failure in its internal communications, and assured Local 99 representatives that Kimmett would not again be denied access. Local 99 accepted this explanation and commitment and the matter was considered settled. Copies of the documents setting forth the facts and agreement were sent to Kimmett. There is no indication in the record that he either replied or agreed with the settlement terms.

The regional attorney, citing Grant Joint Union High School District (2/26/83) PERB Decision No. 196, dismissed the charge, concluding that the District's action represented an individual breach of its agreement with Local 99 rather than a change in policy, and therefore did not rise to the level of an unfair practice. We reject the regional attorney's reasoning, although we find other grounds for dismissing the charge.

EERA subsection 3541.5(a) authorizes an employee to file an unfair practice charge. In South San Francisco Unified School District (1/15/80) PERB Decision No. 112, the Public Employment Relations Board, concluding that an employee may file an unfair practice charge against the employer based on the employer's violation of the rights of the exclusive representative,[2] stated:

> Although only an exclusive representative possesses a negotiating right, an individual as well as an exclusive representative may properly file the charge pursuant to section 3541.5(a) in order to show a violation of law and seek its correction, pp. 6 and 7. (Footnote omitted.)

However, Kimmett's right to file the charge does not carry with it the conclusion that he had a personal statutory right to serve on the Union's bargaining committee or to attend its bargaining sessions. Although he unquestionably enjoyed a broad right to participate in organizational activities, his appointment to the bargaining committee was completely dependent on Local 99's statutory right to bargain and its concomitant right to select its bargaining committee without interference by the employer. Thus, when Kimmett filed his charge, he was seeking first to demonstrate that the District violated the law by interfering with Local 99's bargaining committee appointments, thereby denying Local 99 its subsection

---

2There, the charging party, an individual employee, charged the district with refusal to negotiate in good faith.

3543.5(b) right to represent its constituency, and second, to correct that violation.

When, in the course of the investigation of the charge, the District admitted that Kimmett should not have been denied access to the bargaining session and assured Local 99 that the incident would not be repeated, and when Local 99, the real aggrieved party, accepted that explanation and assurance in settlement of the dispute, Kimmett was left with no surviving interest in the matter.

ORDER

Based on the record, the Public Employment Relations Board ORDERS that the unfair practice charge filed by Jules Kimmett against the Los Angeles Community College District be DISMISSED.

Members Morgenstern and Burt joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD
Los Angeles Regional Office
3470 Wilshire Blvd, Suite 1001
Los Angeles, California 90010
(213)736-3127

January 25, 1984

Jules Kimmett

Mary L. Dowell
Los Angeles Community
College District
617 West Seventh Street
Los Angeles, CA 90017

RE: Kimmett v- Los Angeles CCD, LA-CE-1877,
DISMISSAL OF UNFAIR PRACTICE CHARGE

Dear Mr. Kimmett:

The above charge was filed with the PERB on November 29, 1983, and alleges the the District unilaterally changed an agreed-upon "policy" allowing Union representation in meetings between management and employees who were subject to layoff.

My investigation has revealed the following facts. On about October 19, 1983, the District passed a resolution to layoff classified personnel to achieve a reduction of some 500 positions. Having passed the resolution, the parties began to negotiate regarding the effects of the layoffs. During those negotiations, on about November 17, 1983, the negotiators for SEIU, Local 99 and District Negotiator Dan Means agreed verbally to allow a union representative to be present at meetings held between management and employees where the issues of layoffs and bumping rights would be discussed. Such an arrangement was to be considered as an extension of the negotiations on effects of the planned layoffs.

Shortly thereafter, on November 21, 1983, at about 12:00 midnight, Jules Kimmett, a union steward and member of SEIU, Local 99's negotiating Committee, attempted to sit in on such a meeting involving several employees who had received layoff notices. The principal (also referred in the charge as President Lee) refused to allow Kimmett into the meeting, claiming that the meeting was not disciplinary in nature. Although Kimmett attempted to explain the agreement that had

been reached at the negotiations table, he was not allowed in. None of the District negotiators were present at this meeting.

Almost immediately thereafter, officers of SEIU, Local 99, including Business Representative William Price, brought the problem to the attention of Mr. Means. On November 29, 1983 a meeting was held between Dan Means and the Union's negotiating team (including Kimmett and Price). The District explained that Principal Lee's actions were attributable to a lack of communication between the District negotiators and the principal, who was unaware of the change in procedures negotiated at the table. The District assured the Union that it would not happen again, and Kimmett was sent a letter to this effect on December 5, 1983.

In the interest of preventing any future problems of this nature, the District promised to put the agreed-upon procedure in writing. On December 19, 1983, it was reduced to writing, and forwarded to the Union on December 20, 1983.

William Price of SEIU, Local 99 has indicated that the Union is satisfied with the new arrangement and that the incident with Kimmett was an isolated event due to a misunderstanding.

In Grant Joint Union High School District (2/26/83) PERB Decision No. 196, the PERB ruled that, in order to establish an unlawful unilateral change, the charging party must produce evidence showing: 1) that the employer breached or otherwise altered the parties' written agreement or its own established past practice; 2) that the breach or alteration amounted to a change of policy (i.e., that it had a generalized effect or continuing impact upon terms and conditions of employment of bargaining unit members); and 3) that the change in policy concerned matters within the scope of representation. Kern CCD, PERB Decision No. 337 (8/19/83), at p.9.

Although this case does not involve a breach of a written agreement, but of a new oral layoff procedure, it is arguable that the first element delineated in Grant has been met, inasmuch as the parties established a status quo on November 17, 1983. However, the second criterion noted above has not been established in this case. Since Principal Lee's actions toward Kimmett occurred in one isolated event, due to a miscommunication of the new arrangement, it cannot be said that

the District made a unilateral change in policy. As far as the District was concerned, it remained willing to adhere to the negotiated procedure. No continuing impact has been established, and the effect was limited to November 21, 1983. Other than not attending the meeting, no other impact has been alleged. Therefore, since no unilateral change in policy, as defined in Grant, has been established, this charge does not state a prima facie violation of the EERA, and is hereby dismissed.

Pursuant to Public Employment Relations Board regulation 32635 (California Administrative Code, title 8, part III), you may appeal the refusal to issue a complaint (dismissal) to the Board itself.

Right to Appeal

You may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this Notice (section 32635(a). To be timely filed, the original and five (5) copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) on February 15, 1984, or sent by telegraph or certified United States mail postmarked not later than February 15, 1984 (section 32135). The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

If you file a timely appeal of the refusal, any other party may file with the executive assistant to the Board an original and five (5) copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal (section 32635(b)).

Service

All documents authorized to be filed herein except for amendments to the charge must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany the document filed with the Regional Office or the Board itself (see section 32140 for the required contents and a sample

form). The documents will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

Extension of Time

A request for an extension of time in which to file a document with the Board itself must be in writing and filed with the executive assistant to the Board at the previously noted address. A request for an extension in which to file a document with the Regional Office should be addressed to the Regional Attorney. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the subject document. The request must indicate good cause for the position of each other party regarding the extension and shall be accompanied by proof of service of the request upon each party (section 32132).

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Very truly yours,

Dennis Sullivan
General Counsel

Manuel M. Melgoza
Regional Attorney

MMM:djm