

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



JULES KIMMETT,)	
)	
Charging Party,)	Case No. LA-CE-1870
)	
v.)	PERB Decision No. 418
)	
LOS ANGELES COMMUNITY COLLEGE)	October 18, 1984
DISTRICT,)	
)	
Respondent.)	

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 unfair practice charge against the Los Angeles Community College District (District). Although the Public Employment Relations Board (PERB or Board) affirms the dismissal, it finds that one aspect of the notice of dismissal merits clarification.

Under appropriate circumstances, Kimmett would have standing to file a charge alleging that the District violated its duty to negotiate in good faith with Local 99, Service Employees International Union by failing to provide Local 99 with information necessary to its negotiation efforts. See South San Francisco Unified School District

(1/15/80) PERB Decision No. 112; Kimmett v. Los Angeles Community College District (10/18/84) PERB Decision No. 417, issued herewith.

However, as the Board also indicated in South San Francisco Unified School District, supra, an employee may not utilize an unfair practice charge to insert himself between the employer and the exclusive representative as the party with whom the former must deal. This is what Kimmett seeks to do here.

The right to demand that the employer furnish information runs solely in favor of the exclusive representative as bargaining agent for the unit. Here, Local 99 has found the District's response to its request for information to be adequate. Kimmett does not. His pursuit of this charge despite the Union's satisfaction makes it clear that he is not seeking to protect the exclusive representative's right to information, but to satisfy some ill-conceived concept of his own rights.

ORDER

Based on the record, the Public Employment Relations Board ORDERS that the General Counsel's dismissal of the unfair practice charge filed by Jules Kimmett against the Los Angeles Community College District is AFFIRMED.

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 31, 1984

Jules Kimmett

Mary Dowell, Esq.
Los Angeles Community
College District
617 West 7th Street
Los Angeles, CA 90017

RE: LA-CE-1870, Jules Kimmett v. Los Angeles Community
College District, DISMISSAL OF UNFAIR PRACTICE CHARGE

Dear Parties:

The above charge, filed with the PERB on December 6, 1983, alleges that the District refused to turn over to the Union, SEIU, Local 99, a complete seniority list, including employee names and employee numbers. Further, the charge alleges that two custodial supervisors did not appear on the seniority list that was provided.

My investigation has revealed the following facts. Sometime in about August, 1983, it became evident to the parties that, because of serious financial difficulties, the District would have to implement layoffs to effectuate a reduction in force. At about that time, the Union anticipated a need for a seniority list in order to enable it to negotiate any effects of a future layoff and to determine whether the "bumping procedures" would be implemented consistently and fairly.

The Charging Party alleges that he and fellow members of SEIU Local 99's bargaining team requested an updated seniority list. A seniority list was provided, however, it did not contain employees' names, only employee numbers. Local 99 had, however, been provided with a complete list of employees (though not a seniority list) including names and employees numbers, which Local 99 representatives could have used to cross-reference the seniority list to find out where each employee fell in seniority. The District has stated, without

contradiction, that it did not keep a seniority list that included both names and employee numbers, prior to November of 1983.

On about October, 1983, the District passed a resolution to reduce its classified employees by approximately 500 positions. Subsequently, the parties met to negotiate the effects of the proposed layoffs during November and December, 1983. The parties are still involved in negotiations over the effects of the layoffs.

Jules Kimmatt is a member of the negotiating committee and shop steward of SEIU, Local 99. William Price, also involved in the negotiations, is the official Business Representative for SEIU, Local 99. Because, as of November 12, 1983, the District had not turned over a seniority list to the satisfaction of Kimmatt, he filed the instant unfair practice charge.

On about November 21, 1983, William Price and Jules Kimmatt were provided with a list of employees, including names, employee numbers and their seniority. Jules Kimmatt has referred to this list as a "bumping list".

Although Jules Kimmatt is dissatisfied with the District's list, the Union has officially stated that it is currently negotiating the effects of the layoffs with the District, and is satisfied with the list provided on November 21, 1983. It feels that the provision of the list is an adequate response to its requests for information.

The District responded to this charge by noting, inter alia, that Kimmatt was asserting violations of EERA sections 3543.5(b) and (c), that he had no standing to bring these charges, that SEIU was the exclusive representative of the bargaining unit including Kimmatt, that Kimmatt was not authorized to bring this unfair practice, that the District had provided information to the Union official representative's satisfaction, and that Kimmatt was attempting to insert himself and interfere with the ongoing negotiations process between the exclusive representative and the District. In addition, the District responded that Kimmatt was attempting to assert the rights of two supervisory employees (those not on the list) who belong to and are represented by SEIU, Local 347.

The Charged Party's arguments are well taken. Jules Kimmett filed the instant unfair practice charge from his home, naming himself as Charging Party, and without the authority of SEIU, Local 99. Although Local 99 does not wish to take an official position adverse to Kimmett, it has stated that Kimmett filed this (and others) charge without the authority of the Union and prematurely. He is not sanctioned to file an unfair practice charge with PERB, and is doing so only as an employee, according to the Union. SEIU, Local 99 has indicated that it does not want to be involved as a party in the charge filed by Kimmett.

Although in South San Francisco USD, (1/15/80) PERB Decision No 112, the PERB ruled that an employee may, under some circumstances file a charge alleging violations of Government Code sections 3543.5(a) and (c), the facts of the present charge extend beyond the parameters of that case. In South San Francisco, an employee was refused a coaching position based upon criteria that he believed constituted not only discrimination, but also a unilateral change in policy. After denial of his grievance, he filed an unfair practice charge with the PERB, and the union did not participate in either proceeding.

The PERB held that there was no showing that the employee was attempting to insert either himself or a rival organization into the bargaining process. Therefore, it's ruled that the employee had demonstrated a prima facie violation of sections 3543.5(c) and (a).

In the present case, unlike South San Francisco, the parties were involved in active negotiations. The essence of this charge is that the employer failed to provide information to the Union. A refusal to give information is related directly to the Union's duty to negotiate, and as such has a different impact than a unilateral change. Further, there is evidence from both the District and the Union official representative that Kimmett is injecting himself between the parties and is having a disruptive influence upon the ongoing bargaining relationship. Kimmett is not asserting any adverse impact of District action upon himself, but is asserting a right owed to the exclusive representative and its ability to negotiate. Additionally, he alleges a violation of section 3543.5 (b), as well as 3543.5 (a) and (c), an allegation not made in South San Francisco, supra.

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To grant Kimmett standing to file a charge of this nature would undermine stable labor-management relations by forcing the District to, in effect, bargain with two representatives, Kimmett and SEIU, Local 99, when the positions of those two are, as here, inconsistent. Therefore, the charge is dismissed, in part, on this basis.

With respect to the merits of the charge, there is also a lack of a prima facie violation of the EERA. There is no allegation that either past practice or the parties collective bargaining agreement required the District to keep a seniority list complete with names and employee numbers. The only evidence provided shows that the District did not have such a list, but what it did have - a seniority list with employee numbers which could be cross-referenced - it turned over to the Union. Furthermore, in November, pursuant to the demands of the Union, the District compiled and turned over a "bumping seniority" list with names and employee numbers. Since the Union is satisfied with the list, it cannot be concluded that the employer "refused" to turn over information to it.

An employer is not necessarily required to turn over information in the form requested by the Union, if it fully cooperates with the Union in answering questions and produces the information in the form that it keeps its own records. NLRB v. TexTan, Inc. 318 F2d 472, 53 LRRM 2298 (1963). There is no evidence that the Employer failed to do so, as indicated by the above facts

Regarding the failure of the District's seniority list to include two custodial supervisors, the District and William Price of SEIU, Local 99 agree that those people are not included in the unit represented by Local 99. The parties' collective bargaining agreement recognizes SEIU, Local 99 as the representative of Unit 2, Maintenance and Operations. The contract in one of the Appendices, lists the classifications in the Unit, and Custodial Supervisors are not included therein. Therefore, Kimmett or SEIU, Local 99 have no standing to assert representational rights as to those employees.

Given all the above facts, no violation of the EERA has been demonstrated, and this charge 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 20, 1984, or sent by telegraph or certified United States mail postmarked not later than February 20, 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

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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