STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

TONY PETRICH, Charging Party,	)	Case No. LA-CE-2114
v.	)	PERB Decision No. 511
RIVERSIDE UNIFIED SCHOOL DISTRICT, Respondent.	)	June 21, 1985

Appearance; Tony Petrich, on his own behalf.

Before Hesse, Chairperson; Jaeger, Morgenstern, Burt and Porter, Members.

DECISION

This case is before the Public Employment Relations Board (Board) on appeal by the Charging Party of the Board agent's dismissal, attached hereto, of his charge alleging that the Riverside Unified School District violated section 3543.5(a), (b), (c) and (d) of the Educational Employment Relations Act (Government Code section 3540 et seq.).

We have reviewed the Board agent's dismissal and, finding it free from prejudicial error, adopt it as the Decision of the Board itself.

ORDER

The unfair practice charge in Case No. LA-CE-2114 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

By the BOARD

PUBLIC EMPLOYMENT RELATIONS BOARD
SACRAMENTO REGIONAL OFFICE
1031 18th STREET. SUITE 102
SACRAMENTO. CALIFORNIA 95814
(916) 322-3198

Match 14. 1985

Mr. Tony Petrich

Re: Petrich v. Riverside Unified School District
Unfair Practice Charge No. LA-CE-2114

Dear Mr. Petrich:

The above-referenced charge alleges that the Riverside Unified School District (District) has failed to provide the Charging Party with grievance forms in a timely manner and that the form is generally inadequate for its intended use. This conduct is alleged to violate section 3543.5(a). (b). (c) and (d) of the Educational Employment Relations Act (EERA).

I indicated to you in my letter dated March 1. 1985 that the above-referenced charge did not state a prima facie case, and that unless you amended the charge to state a prima facie case, or withdrew it prior to March 11. 1985. it would be dismissed. More specifically. I informed you that if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge accordingly.

You chose not to amend the charge but rather to explain to me in telephone conversations on March 6 and 7. why you felt the charge as presently written stated a prima facie case. After carefully reviewing your original charge and. the facts and legal argument presented in our telephone conversations. I have concluded that the charge fails to present a prima facie case based on the facts and reasons contained in my March 1 letter (attached as Exhibit 1) as well as the reasoning below.

First, during our conversation you indicated that during the December 3 grievance meeting the District's Assistant Superintendent for Personnel. Mr. Tucker, appeared happy that he had no forms to provide to you. You alleged that this demonstrates that Mr. Tucker was intending to interfere with your ability to file grievances in the future. However, you have failed to show that the District's inability to provide you with forms has in anyway interfered with your rights to file a grievance.

Second, you stated that the District failed to provide a reasonable justification why the forms couldn't be provided and that if the Association had asked for the forms that they would have received them. Without a showing that the lack of forms impeded your ability to file a grievance, the fact that the District provided no justification for lack of forms is of no consequence. Although you speculated that the District would have provided forms for the Association, you did not present facts indicating either that the District was requested to provide such forms or that it did provide such forms to the Association during the time in which it failed to provide them to you.

Third, you alleged that Mr. Tucker's suggestion that you use any piece of paper to file a grievance is a unilateral change in practice. As explained in the March 1 letter, to demonstrate a unilateral change Charging Party must show that the District has implemented a change in policy. There are no facts presented in this charge nor did you provide me with any which indicate how Mr. Tucker's suggestion is a change in policy. Rather, the statement appears to be an attempt to solve the problem of a lack of grievance forms. You also stated that lack of correct grievance forms disadvantages you because of the need to meet the contractual time lines for the filing of a grievance. However, you have not presented facts showing that you filed grievances on anything other than District forms, that such filings were denied by the District because they failed to meet the time lines in the contract, or that the District refused your request for an extension of time lines as provided for in section 18.3 of the contract. Without such facts there is no showing of a prima facie case of discrimination.

Finally, you argue that this charge should be viewed not solely under the letter of the law, but rather with respect to the spirit of the law. Section 3540 of the EERA reads in pertinent part:

> It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California by providing a uniform basis for recognizing the right of public school employees to join organizations of their

> own choice, to be represented by such organizations in their professional and employment relationships with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit,
> • • •

Although Charging Party believes that this purpose has been violated, the fact6 presented in this case simply do not demonstrate such a violation. It is in the spirit as well as the letter of the EERA that this charge must be dismissed.

Pursuant to Public Employment Relations Board regulation section 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 dismissal (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 April 3. 1985. or sent by telegraph or certified United States mail postmarked not later than April 3. 1985 (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 to issue a complaint, any other party may file with 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 must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany the document filed with the Board

itself (see section 32140 for the required contents and a sample form). The document 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 Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and. if known, 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 M. SULLIVAN
General Counsel

By
Robert Thompson
Regional Attorney

STATE OF CALIFORNIA
GEORGE DEUKMEJIAN. Governor

PUBLIC EMPLOYMENT RELATIONS BOARD
SACRAMENTO REGIONAL OFFICE
1031 18TH STREET. SUITE 102
SACRAMENTO. CALIFORNIA 95814
(916) 323-3198

March 1. 1985

Mt. Tony Petrich

Re: Petrich v. Riverside Unified School District
Unfair Practice Charge No. LA-CE-2114

Dear Mr. Petrich:

The above-referenced charge alleges that the Riverside Unified School District (District) has failed to provide the Charging Party with grievance forms in a timely manner and that the form is generally inadequate for its intended use. This conduct is alleged to violate section 3543.5(a). (b). (c) and (d) of the Educational Employment Relations Act. (EERA)

My investigation revealed the following fact6: On November 20, 1984. Mr. Petrich requested that Frank Tucker, the District's assistant superintendent for personnel, provide him with a set of level I and level II grievance forms. Mr. Tucker replied that he would comply with the requests. On December 3. 1984. Mr. Petrich renewed his request and Mr. Tucker informed him he was out of grievance forms, but that Mr. Petrich could write the grievance down on "any old piece of paper." On December 11. Mr. Petrich again requested grievance forms and was told by Mr. Tucker that he was unaware of when the forms would be available. On December 13. Mr. Tucker indicated during a level II grievance conference that he could not read the immediate supervisor's response contained on the Charging Parties copy of the level I grievance form.

Based on the facts outlined above, this charge fails to state a prima facie violation of the EERA for the reasons which follow.

A violation of EERA section 3543.5(a) requires allegations that: (1) an employee has exercised rights under the EERA; (2) the employer has imposed or threatened to oppose reprisals, discriminated or threatened to discriminate, or otherwise

interfered with, restrained, or coerced the employee because of the exercise of rights guaranteed by the EERA. Carlsbad Unified School District (1/30/79) PERB Decision No. 89; Novato Unified School District (4/30/82) PERB Decision No. 210.

Although the Public Employment Relations Board (PERB) has ruled that employees have a protected right to file a grievance North Sacramento School District (12/20/82) PERB Decision No. 264, this does not translate into having a protected right to either obtain grievance forms on demand or have those grievance forms redesigned. First. Charging Party has failed to demonstrate through a presentation of facts that the lack of grievance forms has prevented him or others from filing grievances. To the contrary, the charge states that the District was willing to accept grievances that were not on the grievance form. Therefore, the District's inability to provide Mr. Petrich with grievance forms does not interfere with his right to file a grievance. Second, the possible inefficiencies connected with the present style of form outlined in the charge do not rise to an interference with Charging Party's right to file a grievance. Accordingly. Charging Party has failed to make out a violation of section 3543.5(a) or (b).

In determining whether a party has violated section 3543.5(c) of EERA, the PERB utilizes either the "per se" or the "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. Stockton Unified School District (11/2/80) PERB Decision No. 143. Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer has implemented a change in policy concerning a matter within the scope of representation, (2) the change is implemented prior to the employer notifying the exclusive representative and giving it an opportunity to request negotiations. Walnut Valley Unified School District (3/30/81) PERB Decision No. 160. Grant Joint Union High School District (2/26/82) PERB Decision No. 196.

This charge fails to state a unilateral change because the Charging Party has failed to present evidence shoving that the District has changed any previous practice. Although Charging Party is unhappy with the present format of the grievance form, there are no facts which indicate that the District has changed that form within the six months prior to the filing of the

charge. In discussions with the undersigned, Charging Party stated that the present grievance form has been in effect without change since approximately 1977. Thus, these allegations do not state a violation of section 3543.5(c).

Finally, it is alleged that the employer's conduct has violated EERA section 3543.5(d). Section 3543.5(d) reads.

> It shall be unlawful for a public school employer to dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

There were no facts presented in this charge or discovered during the investigation which would support a prima facie violation of this section.

For these reasons, charge number LA-CE-2114, as presently written, does not state a prima facie case. If you feel that there are any factual inaccuracies in this letter or any additional facts which would correct the deficiencies explained above, please amend the charge accordingly. The amended charge should be prepared on a standard PERB unfair practice charge form clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before March 11, 1985. I shall dismiss your charge. If you have any questions on how to proceed, please call me at (916) 322-3198.

Sincerely yours.

Robert Thompson
Regional Attorney