

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



TONY PETRICH,)
)
 Charging Party,) Case No. LA-CE-2130
)
 v.) PERB Decision No. 513
)
 RIVERSIDE UNIFIED SCHOOL DISTRICT,) June 21, 1985
)
 Respondent.)
)
)

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 partial dismissal, attached hereto, of certain portions of his charges 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.).¹

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

¹On April 10, 1985, the Board's regional attorney issued a complaint in the instant case wherein she found that certain allegations contained in the charge established a prima facie violation of Government Code section 3543.5(a).

ORDER

Charging Party's appeal of the partial dismissal is hereby
DENIED.

By the BOARD

PUBLIC EMPLOYMENT RELATIONS BOARD

LOS ANGELES REGIONAL OFFICE
3470 WILSHIRE BLVD., SUITE 1001
LOS ANGELES, CALIFORNIA 90010
(213) 736-3127



April 10, 1985

Tony Petrich
24536 Vandenberg Drive
Sunnymead, California 92388

Re: LA-CE-2130, Tony Petrich v. Riverside Unified School District PARTIAL DISMISSAL OF UNFAIR PRACTICE CHARGE

Dear Mr. Petrich:

The above-referenced charge and first amended charge allege that the Riverside Unified School District has violated Government Code section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA) as follows:

1. An alleged derogatory document by Principal Dr. Mary Ann Sund purporting to summarize a conference with Tony Petrich and placed in his personnel file on or about August 22, 1985 was a reprisal because of his exercise of rights guaranteed by the EERA, in violation of section 3543.5(a).
2. A correction memo by Dr. Sund, erroneously dated January 8, 1984 and placed in the personnel file of Mr. Petrich, noting his alleged refusal to follow certain instructions regarding the removal of leaves on the school grounds, was a reprisal because of his exercise of rights guaranteed by the EERA, in violation of section 3543.5(a).
3. A letter to Mr. Petrich from Assistant Superintendent Frank C. Tucker dated January 8, 1985, advising him that Dr. Sund could not accept his gift of a hubcap was a reprisal because of his exercise of rights guaranteed by the EERA, in violation of section 3543.5(a).
4. Dr. Sund denied Mr. Petrich's right to representation at a pre-disciplinary meeting held on January 14, 1985, because Dr. Sund expressed her unhappiness regarding the amount of time needed for him to arrange union representation for the meeting, in violation of section 3543.5(a), (b), (c) and (d).

5. A memorandum to Mr. Petrich from Dr. Sund dated January 17, 1985 and placed in his personnel file, purporting to describe the pre-disciplinary meeting, wherein Dr. Sund noted that, "You stated that you thought you would have to file a grievance as a result of [her] error" in dating the January 8, 1985 memo was a reprisal taken because of his exercise of rights guaranteed by the EERA, in violation of section 3543.5(a).

6. Dr. Sund's recommendation that Mr. Petrich be dismissed as a result of the January 8 meeting, memorialized in the January 17 memorandum, was a reprisal taken because of his exercise of rights guaranteed by the EERA, in violation of section 3543.5(a).

7. A January 30, 1985 letter to Mr. Petrich from Mr. Tucker, placed in his personnel file and sent to Payroll, advising him that his pay will be automatically docked for any day he is absent from work because of illness between February 8 and June 30, 1985 unless he provides written verification signed by a physician, is a reprisal taken because of his exercise of rights guaranteed by the EERA, in violation of section 3543.5(a).

8. The January 30, 1985 letter described in paragraph 7 above was a unilateral change of a collective bargaining agreement in violation of section 3543.5(c).

9. Dr. Sund's insistence that the grievance regarding contractual guidelines for the placement of alleged derogatory materials in personnel files be scheduled at 3:15 p.m. on February 12, 1985, and at no other time, was a denial of rights guaranteed by the EERA, in violation of section 3543.5(a).

I indicated to you in my letter dated February 26, 1985 that certain allegations contained in the charge did not state a prima facie case. The letter is attached as Exhibit 1. You were advised 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 were further advised that unless you amended these allegations to state a prima facie case, or withdrew them prior to March 11, 1985, they would be dismissed. Thereafter, I allowed

you two extensions of time, ultimately until March 28, 1985, to amend the charge.

On March 25, 1985, you filed the first amended charge. It supplied facts relating to grievances filed pursuant to the negotiated contract and unfair practice charges filed with the PERB, thus showing activity protected by the EERA. The first amended charge also supplied facts indicating a possible nexus between your protected activities and the District's conduct summarized above.

A complaint based on the allegations alleged in paragraphs 2, 6 and 7 above is issuing simultaneously with this letter dismissing the remaining allegations.

Facts and Discussion

My investigation based on a review of the charge and first amended charge, and our conversations on February 7 and 11, 1985, revealed the following facts.

Mr. Petrich has had a history of personnel issues with the Riverside Unified School District since 1983. In that year one reprimand was placed in his personnel file. In 1984, four more reprimands were placed in his personnel file, each concerning a different issue. He filed responses to each of the reprimands. Between October 1 and December 31, 1984, fourteen different "derogatory" materials were placed in Mr. Petrich's personnel file by Dr. Sund and Mr. Tucker.

In 1982, Mr. Petrich filed five grievances pursuant to the grievance procedure negotiated between the District and his exclusive representative, the California School Employees Association, Riverside Chapter #506. He also filed grievances on September 25, 1984, November 13, 1984 and February 7, 1985 regarding the placement of alleged derogatory materials in his personnel file.

In 1984 Mr. Petrich filed two unfair practice charges against the District. The first charge was LA-CE-2097 filed on November 27, 1984, and a partial complaint was issued. The second charge was LA-CE-2112 filed on December 26, 1984. In 1985, prior to this charge, he also filed charge LA-CE-2114 on January 2, 1985.

August 21, 1984 Placement of Derogatory Material in Personnel File

On or about August 22, 1984, Dr. Sund placed in the personnel file of Mr. Petrich an alleged derogatory document purporting to summarize a conference with him regarding his hours of employment.

This allegation was initially raised in the first amended charge filed March 25, 1985. Additionally, it is already the subject of a separate unfair practice charge, Petrich v. Riverside Unified School District, LA-CE-2134, filed on February 11, 1985. Because the issue will be fully treated in case LA-CE-2134, the allegation is dismissed from the instant charge.

January 8, 1985 Hubcap Letter

Mr. Petrich received the following letter dated January 8, 1985 from Assistant Superintendent Frank C. Tucker:

Dear Tony,

I am holding in my office a new Toyota hubcap which I am told you gave to Dr. Sund as a replacement for one she lost months ago. She could not accept this gift because she is your supervisor. Please come take the hubcap after work any afternoon you find convenient. My secretary will have it ready for you.

Dr. Sund told me that when she tried to return it you refused to take it back. This is why she sent it to me. Please understand that supervisors cannot accept gifts of any significant value from employees whose work they evaluate. To do so might indicate to other employees that gifts were expected, and if not presented, the employee would receive an unsatisfactory evaluation. Neither should an employee offer a supervisor a gift of significant value. Offering a gift can create an implication that gifting can purchase a satisfactory evaluation.

Having known you for several years, I believe you offered the gift in good faith, and with no ulterior

motive. As a knowledgeable man, I believe you must understand why Dr. Sund cannot accept a gift from you,

Yours truly,

Frank C. Tucker
Assistant Superintendent, Personnel

This letter is a mild correction of poor judgment demonstrated by Mr. Petrich in giving a gift of significant value to a supervisor. The letter does not concern Mr. Petrich's working conditions. It does not contain a threat of reprisal or force or promise of benefit. Rio Hondo Community College District (5/19/80) PERB Decision No. 128. Thus, there is no harm to Mr. Petrich's employee rights under the EERA. Absent such harm there exists no nexus between the employer's conduct and the exercise of employee rights, and this allegation is dismissed. Carlsbad Unified School District (1/30/79) PERB Decision No. 89; Novato Unified School District (4/20/82) PERB Decision No. 210.

January 14, 1985 Pre-Disciplinary Meeting

Mr. Petrich received a correction memo from Dr. Sund, erroneously dated January 8, 1985, noting his alleged refusal to follow certain instructions regarding the removal of leaves on the school grounds. The memo instructed Mr. Petrich to meet with Dr. Sund at the earliest time her secretary could arrange an appointment to discuss his actions and possible disciplinary action.

Before the pre-disciplinary meeting Dr. Sund indicated to Mr. Petrich that she did not wish to postpone the meeting to allow California School Employees Association representative, Mr. Alan Aldrich, to attend. She thought it was more appropriate for another classified staff member, Ms. Barbara Boettcher, to represent Mr. Petrich. Ms. Boettcher had previously written certain accusations against Mr. Petrich which Dr. Sund documented for his personnel file and Mr. Petrich did not wish her to represent him.

The pre-disciplinary meeting was held on January 14, 1985, four workdays after the January 8 memo. Mr. Aldrich was present and represented Mr. Petrich. Dr. Sund again expressed to Mr. Petrich her displeasure at delaying the meeting so that he might be represented by Mr. Aldrich.

Under the EERA, employees have the right to representation by their exclusive representative at a pre-disciplinary meeting. Rio Hondo Community College District (1982) PERB Decision No. 260. Mr. Petrich alleges that this right was denied because Dr. Sund did not wish to delay the meeting four workdays until his union representative was available, complained regarding the delay, and suggested that he use as a representative another employee whom he did not trust. Mr. Petrich feels that Dr. Sund should have not expressed her desire for an earlier meeting or attempted to persuade him to accept a different representative.

The fact remains that Dr. Sund did delay the pre-disciplinary meeting until Mr. Petrich's desired representative was able to be present. In so doing, she did allow him his right to representation. Additionally, she did not act unlawfully in expressing her own desires. Representatives of an employer may express their opinions on employment matters so long as there is no interference with the employee's exercise of rights under the EERA. Rio Hondo Community College District (5/19/80) PERB Decision No. 128.

The facts as alleged do not indicate interference with Mr. Petrich's rights, and therefore the employer's actions regarding the pre-disciplinary meeting did not violate section 3545.5(a). Because the employer's actions did not violate section 3543.5(a), they also did not violate section 3543.5(b), (c) and (d). There was no denial of employee organization rights guaranteed by EERA; no unilateral change of an established practice; and no domination of or interference with an employee organization.

January 17, 1985 Memorandum Regarding the Pre-Disciplinary Conference

A memorandum to Mr. Petrich from Dr. Sund dated January 17, 1985 and placed in his personnel file, purported to describe the pre-disciplinary meeting held on January 14. In this memorandum Dr. Sund wrote:

You pointed out that the date on the memo was incorrect. It reads January 8, 1984. It should read January 8, 1985. The error is a common, typographical error at the beginning of a new year. This memo is not scheduled to be placed in your file until January 22, 1985. I will make the necessary correction before it is placed in the personnel file.

You stated that you thought you would have to file a grievance.

Dr. Sund's memorandum does no more than summarize what was said at the pre-disciplinary conference. It is a statement of fact. On its face it does not constitute a reprisal or threat of reprisal against Mr. Petrich and therefore the allegations are dismissed. Rio Hondo Community College District, supra (5/19/80) PERB Decision No. 128.

January 30, 1985 Letter Regarding Pay Docks for Unauthorized Absences

A January 30, 1985 letter to Mr. Petrich from Mr. Tucker, placed in his personnel file and sent to Payroll, advised him that his pay will be automatically docked for any day he is absent from work because of illness between February 8 and June 30, 1985, unless he provides written verification of the illness signed by a physician. The letter indicates the action is being taken because of excessive use of sick leave between July 1, 1984 and January 29, 1985.

The 1982-1985 collective bargaining agreement for Mr. Petrich's bargaining unit between the Riverside Unified School District and Riverside Chapter #506, affiliate of the California School Employees Association, provides in Article XIII on Leaves, section 13.3.4:

A doctor's certificate or other proof of illness or disabling conditions may be required by the District for any illness or disabling condition in which the absence is five (5) days or more or when the classified employee has been informed that verification for future absences will be required. Such verification statements may be required by the District Personnel Office.

Article XIX on Disciplinary Action and Dismissal Procedures, section 19.0 provides:

The District may impose discipline or dismissal on permanent employees when the work performance or behavior of the employee is such that prior verbal and/or written warnings by the immediate supervisor have failed to result in a remediation of the unsatisfactory performance or behavior. The District may suspend with pay, suspend without pay, reduce

employee's hours, dock pay for absence without authority, or discipline employees in other appropriate manners to correct or remediate an employee's unsatisfactory performance or behavior. The District may dismiss permanent bargaining unit employees when the District has attempted to remediate unsatisfactory performance or behavior. (Emphasis added.)

Section 19.1 regarding the right to request a hearing provides:

A permanent employee has the right to request an informal hearing with the immediate supervisor prior to disciplinary action and/or dismissal. If requested, such a hearing will be held.

Article XIX of the negotiated agreement, concerning Disciplinary Action and Dismissal Procedures, quoted above, specifically provides in section 19.0 that the District may dock pay for absence without authority, subject to the employee's right to request a hearing as provided in section 19.1. Mr. Tucker's January 30 letter warns Mr. Petrich that he intends to exercise the District's prerogative to dock pay absent a physician's verification in case of future illness. The letter does not negate Mr. Petrich's right to request a hearing pursuant to the contract. There has not to date been a dock of pay prior to such a hearing. Therefore the employer's actions do not constitute a unilateral change of the terms and conditions of the contract in violation of section 3543.5(c).

Inflexibility in Setting February 12, 1985 Grievance Conference

The first amended charge raises the new allegation that Dr. Sund inflexibly insisted that the grievance conference relating to a February 7, 1985 grievance be scheduled at 3:15 p.m. on February 12, 1985, and at no other time. The grievance related to guidelines under the contract for the placement of alleged derogatory materials in personnel files. Mr. Petrich alleges that this action denied his right to representation under the EERA.

The first amended charge also notes that the conference was held as scheduled because Mr. Petrich was able to attend at that date and time. For this reason, Mr. Petrich has failed to show the employer's conduct resulted in some harm to his employee rights. Absent this element, there is no violation of

section 3543.5(a) and this allegation is dismissed. Carlsbad Unified School District, supra, and Novato Unified School District, supra.

Right to Appeal

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.

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 29, 1985, or sent by telegraph or certified United States mail postmarked not later than April 26, 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, 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 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 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.

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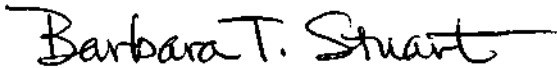
The request must indicate good cause for the position of each other party regarding the extension and shall be accompanied by proof of service of the request upon each party (section 32132).

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

A handwritten signature in black ink that reads "Barbara T. Stuart". The signature is written in a cursive style with a long horizontal line extending from the end of the name.

Barbara T. Stuart
Regional Attorney

cc: Charles Field

BTS:djm

PUBLIC EMPLOYMENT RELATIONS BOARD

LOS ANGELES REGIONAL OFFICE
3470 WILSHIRE BLVD., SUITE 1001
LOS ANGELES, CALIFORNIA 90010
(213) 736-3127



February 26, 1985

Tony Petrich
24536 Vandenberg Drive
Sunnymead, California 92388

RE: LA-CE-2130, Tony Petrich v. Riverside School District

Dear Mr. Petrich:

The above-referenced charge alleges that the Riverside Unified School District has violated Government Code section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA) as follows:

1. A correction memo by Principal Dr. Mary Ann Sund dated January 8, 1984 and placed in your personnel file noting your alleged refusal to follow certain instructions regarding the removal of leaves on the school grounds was a reprisal because of your exercise of rights guaranteed by EERA, in violation of section 3543.5(a).
2. A letter to you from Assistant Superintendent Frank C. Tucker dated January 8, 1985, advising you that Dr. Sund could not accept a gift of a hubcap was a reprisal because of your exercise of rights guaranteed by EERA, in violation of section 3543.5(a).
3. Dr. Sund denied your right to representation at a pre-disciplinary meeting held on January 14, 1985, because Dr. Sund expressed her unhappiness regarding the amount of time needed for you to arrange union representation for the meeting, in violation of section 3543.5(a), (b), (c) and (d).
4. A memorandum to you from Dr. Sund dated January 17, 1985, and placed in your personnel file, purporting to describe the pre-disciplinary meeting, wherein Dr. Sund noted that, "You stated that you thought you would have to file a grievance as a result of [her] error" in dating the January 8, 1985 memo was

a reprisal taken because of your exercise of rights guaranteed by EERA, in violation of section 3543.5(a).

5. The decision to dismiss you memorialized in the January 17, 1985 memorandum was a reprisal taken because of your exercise of rights guaranteed by EERA, in violation of section 3543.5(a).

6. A January 30, 1985 letter to you from Mr. Tucker, placed in your personnel file and sent to Payroll, advising you that your pay will be automatically docked for any day you are absent from work because of illness between February 8 and June 30, 1985, unless you provide written verification signed by a physician, is both a reprisal in violation of section 3543.5(a) and a unilateral change of a collective bargaining agreement in violation of section 3543.5(c).

Facts

My investigation based on a review of the charge and our conversations on February 7 and 11, 1985, revealed the following facts.

You have had a history of personnel issues with the Riverside Unified School District since 1983. In that year one reprimand was placed in your personnel file. In 1984, four more reprimands were placed in your personnel file, each concerning a different issue. You filed responses to each of the reprimands.

In 1982, you filed five grievances pursuant to the grievance procedure negotiated between the District and your exclusive representative, the California School Employees Association, Riverside Chapter #506. You also filed grievances on September 24, 1984, November 13, 1984 and February 7, 1985 regarding the placement of alleged derogatory materials in your personnel file.

In 1984 you filed two unfair practice charges against the District. The first charge was LA-CE-2097 filed on November 27, 1984, and a partial complaint was issued. The second charge was LA-CE-2112 filed on December 26, 1984. In 1985, prior to this charge, you also filed charge LA-CE-2114 on January 2, 1985.

In 1985 you received a correction memo from Dr. Sund dated January 8, 1984, noting your alleged refusal to follow certain instructions regarding the removal of leaves on the school grounds. The memo instructed you to meet with Dr. Sund at the earliest time her secretary could arrange an appointment to discuss your actions and possible disciplinary action. The memo stated it would be placed in your personnel file.

You also received a letter from Assistant Superintendent Frank C. Tucker dated January 8, 1985, advising you that Dr. Sund could not accept a hubcap you had given her because supervisors cannot accept gifts of any significant value from employees whose work they evaluate.

Before the pre-disciplinary meeting Dr. Sund indicated to you that she did not wish to postpone the meeting to allow California School Employees Association representative, Mr. Alan Aldrich, to attend. She thought it was more appropriate for another classified staff member, Ms. Barbara Boettcher, to represent you. Ms. Boettcher had previously written certain accusations against you which Dr. Sund documented for your personnel file and you did not wish her to represent you. At the pre-disciplinary meeting held on January 14, 1985, four workdays after the January 8 memo, Dr. Sund again expressed to you her displeasure at delaying the meeting so that you might be represented by Mr. Aldrich.

A memorandum to you from Dr. Sund dated January 17, 1985 and placed in your personnel file, purported to describe the pre-disciplinary meeting. In this memorandum Dr. Sund wrote:

You pointed out that the date on the memo was incorrect. It reads January 8, 1984. It should read January 8, 1985. The error is a common, typographical error at the beginning of a new year. This memo is not scheduled to be placed in your file until January 22, 1985. I will make the necessary correction before it is placed in the personnel file.

You stated that you thought you would have to file a grievance.

The January 17, 1985 memo also indicated that following the meeting Dr. Sund had consulted with Mr. Tucker and decided to recommend that you be dismissed from employment. To date you have not been dismissed.

A January 30, 1985 letter to you from Mr. Tucker, placed in your personnel file and sent to Payroll, advised you that your pay will be automatically docked for any day you are absent from work because of illness between February 8 and June 30, 1985, unless you provide written verification of the illness signed by a physician. The letter indicates the action is being taken because of excessive use of sick leave between July 1, 1984 and January 29, 1985.

The 1982-1985 collective bargaining agreement for your bargaining unit between the Riverside Unified School District and Riverside Chapter #506, affiliate of the California School Employees Association, provides in Article XIII on Leaves, section 13.3.4:

A doctor's certificate or other proof of illness or disabling conditions may be required by the District for any illness or disabling condition in which the absence is five (5) days or more or when the classified employee has been informed that verification for future absences will be required. Such verification statements may be required by the District Personnel Office.

Article XIX on Disciplinary Action and Dismissal Procedures, section 19.0 provides:

The District may impose discipline or dismissal on permanent employees when the work performance or behavior of the employee is such that prior verbal and/or written warnings by the immediate supervisor have failed to result in a remediation of the unsatisfactory performance or behavior. The District may suspend with pay, suspend without pay, reduce employee's hours, dock pay for absence without authority, or discipline employees in other appropriate manners to correct or remediate an employee's unsatisfactory performance or behavior. The District may dismiss permanent bargaining unit employees when the District has attempted to remediate unsatisfactory performance or behavior. (Emphasis added.)

And section 19.1:

Right to Request Hearing; A permanent employee has the right to request an informal hearing with the immediate supervisor prior to disciplinary action and/or dismissal. If requested, such a hearing will be held.

Section 19.6 sets forth the details of the hearing and provides that the hearing officer's decision shall only be advisory and "The decision of the Board of Education shall be final."

Reprisal Issues

According to section 3543.5 of the EERA, it is unlawful for a public school employer to:

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.

To establish a violation of section 3543.5(a), a charging party must show that (1) an employee has exercised rights under the EERA, (2) the employer had knowledge of the exercise of those rights, and (3) the employer imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained or coerced the employee because of his exercise of those rights. Novato Unified School District (4/30/82) PERB Decision No. 210; Carlsbad Unified School District (1/30/79) PERB Decision No. 89. Regarding these elements of proof, your charge fails to allege sufficient facts showing that you exercised rights under the EERA or showing that the District imposed reprisals because of your exercise of such rights.

With the exception mentioned below, the charge as written does not allege facts indicating that you have engaged in conduct protected by EERA because your activities concerned matters solely of interest to yourself. The failure to clean up the leaves incident, hubcap gift and use of sick leave involve only your individual and personal relationship with the District. Such conduct has not been considered "concerted activity" under the National Labor Relations Act nor can it be construed to constitute an "exercise of rights" protected by the EERA. Roadway Express, Inc. (1981) 257 NLRB No. 153, 108 LRRM 1085.

The filing of grievances pursuant to the contract negotiated between the District and your exclusive representative, or the filing of any unfair practice charges pursuant to the EERA are protected activities. From our oral conversations it appears that you did engage in such activity, but this must be alleged in the charge. The charge does allege that you sought to exercise your rights to union representation at the pre-disciplinary conference held on January 14, 1985. However, as discussed in the next paragraph, you must show that the District's subsequent conduct was taken because of your exercise of these rights.

The charge as written does not allege any facts indicating the District acted against you because of your filing of grievances or unfair practice charges or other exercise of employee rights. You must show more than the mere fact that you engaged in protected activity in order to demonstrate the employer's unlawful motive. The timing of the employer's conduct in relation to protected activity is an important factor, but is not alone sufficient to demonstrate a violation of the EERA. Moreland Elementary School District (7/27/82) PERB Decision No. 227. You must also demonstrate one or more of the following additional factors: (1) the employer's disparate treatment of other employees, (2) the employer's departure from established procedures and standards when dealing with you, (3) the employer's inconsistent or contradictory justifications for its actions, (4) the employer's cursory investigation of your alleged misconduct, (5) the employer's failure to offer you justification at the time it took action against you, or the offering of exaggerated, vague or ambiguous reasons, or (6) any other facts which might demonstrate the employer's unlawful motive. Novato Unified School District, supra; North Sacramento School District (12/20/82) PERB Decision No. 264.

Absent factual allegations as described above detailing the nature of your protected conduct and providing an inference of the employer's unlawful motive, the charge does not state a prima facie case of a violation of section 3543.5(a). Therefore, the allegations described in paragraphs 1, 2, 4 and 5 above may be dismissed.

Pre-Disciplinary Meeting

Employees under the EERA have the right to representation by their exclusive representative at a pre-disciplinary meeting. Rio Hondo Community College District (1982) PERB Decision No. 260. You allege that this right was denied because

Dr. Sund did not wish to delay the meeting four workdays until your union representative was available, complained regarding the delay, and suggested that you use as a representative another employee whom you did not trust. You feel Dr. Sund should have not expressed her desire for an earlier meeting or attempted to persuade you to accept a different representative.

The fact remains that Dr. Sund did delay the pre-disciplinary meeting until your desired representative was able to be present. In so doing, she did allow you your right to representation. Additionally, she did not act unlawfully in expressing her own desires. Representatives of an employer may express their opinions on employment matters so long as there is no interference with the employee's exercise of rights under EERA. Rio Hondo Community College District (5/19/80) PERB Decision No. 128.

The facts as alleged do not rise to the level of interference and therefore, the employer's actions regarding the pre-disciplinary meeting did not violate section 3545.5(a). Because the employer's actions alleged and described in paragraph 3 above did not violate section 3543.5(a), they also did not violate sections 3543.5(b), (c) and (d). There was no denial of employee organization rights guaranteed by EERA; no unilateral change of Article XIX, section 19.1 of the negotiated contract; and no domination or interference with an employee organization.

Alleged Pay Dock Unilateral Change

Article XIX of the negotiated agreement, concerning Disciplinary Action and Dismissal Procedures, quoted above, specifically provides in section 19.0 that the district may dock pay for absence without authority, subject to the employee's right to request a hearing as provided in section 19.1. Mr. Tucker's January 30 letter warns you that he intends to exercise the District's prerogative to dock pay absent a physician's verification in case of future illness. The letter does not negate your right to request a hearing pursuant to the contract. There has not to date been a dock of pay prior to such a hearing. Therefore the employer's actions alleged and described in paragraph 6 above did not constitute a unilateral change of the terms and conditions of the contract in violation of section 3543.5(c).

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Opportunity to Amend

For these reasons, the charge as presently written does not state a prima facie violation of the SEERA. If you feel that there are facts which would require a different conclusion, please amend the charge accordingly. An amended charge should be prepared on a standard PERB unfair practice charge and 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 (213) 736-3127.

Sincerely yours,

Barbara T. Stuart
Regional Attorney

BTS:djm

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

| | | |
|--------------------------|---|----------------------------------|
| TONY PETRICH, |) | |
| |) | |
| Charging Party, |) | |
| |) | Case No. LA-CE-2130 |
| v. |) | |
| |) | |
| RIVERSIDE UNIFIED SCHOOL |) | <u>COMPLAINT (Unfair - EERA)</u> |
| DISTRICT, |) | |
| |) | |
| Respondent. |) | |
| <hr/> | | |

It having been charged by the Charging Party that the Respondent has engaged in certain unfair practices in violation of California Government Code section 3543.5, the General Counsel of the Public Employment Relations Board (PERB) on behalf of the PERB, pursuant to California Government Code sections 3541.3(h) and (i) and California Administrative Code, title 8, part III, sections 32620(b)(6) and 32640, issues this COMPLAINT and alleges:

1. The Respondent is a public school employer within the meaning of Government Code section 3240.1(k).
2. The Charging Party is an employee within the meaning of Government Code section 3540.1(j).
3. The charge was filed with the PERB on February 4, 1985, and served on Respondent on February 4, 1985.
4. The first amended charge was filed with the PERB on March 25, 1985, and served on Respondent on March 25, 1985.

5. Tony Petrich, at all relevant times, was employed as a gardener for Respondent, and was a member of a bargaining unit of classified employees covered by a collective bargaining agreement between the California School Employees Association, Chapter #506 and the Riverside Unified School District.

6. Pursuant to the collective bargaining agreement, Mr. Petrich filed grievances on September 25, 1984 and November 13, 1984.

7. Mr. Petrich filed unfair practice charges against the District pursuant to Government Code section 3541.5. Charge LA-CE-2097 was filed on November 27, 1984, and a partial complaint was issued. Charge LA-CE-2112 was filed on December 26, 1984. Charge LA-CE-2114 was filed on January 2, 1985.

8. A correction memo by Principal Dr. Mary Ann Sund, erroneously dated January 8, 1984 and placed in the personnel file of Mr. Petrich, noted Mr. Petrich's alleged refusal to follow certain instructions regarding the removal of leaves on the school grounds.

9. Dr. Sund recommended the dismissal of Mr. Petrich following a pre-disciplinary meeting regarding the removal of leaves incident, as memorialized in her January 17, 1985 memorandum to Mr. Petrich.

10. A letter to Mr. Petrich from Mr. Tucker dated January 30, 1985, placed in his personnel file and sent to Payroll, advised him that his pay will be automatically docked for any day he is absent from work because of illness between February 8 and June 30, 1985 unless he provides written verification signed by a physician.

11. The actions described above in paragraphs 8, 9 and 10 were taken by Respondent because of Mr. Petrich's exercise of rights described in paragraphs 6 and 7. By its conduct, Respondent has violated Government Code section 3543.5(a).

12. The remaining allegations made in the charge are being dismissed by letter to issue simultaneously with this complaint. Said letter is incorporated and attached herein.

DATED:

4/10/85

DENNIS M. SULLIVAN
General Counsel

BY_

Barbara T. Stuart
Regional Attorney