

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



BRUCE LEE CAUKIN,)
)
 Charging Party,) Case No. LA-CE-2354
)
 v.) PERB Decision No. 587
)
 LOS ANGELES UNIFIED SCHOOL DISTRICT,)
) September 25, 1986
 Respondent.)
 _____)

Appearance: Bruce Lee Caukin, on his own behalf.

Before Hesse, Chairperson; Morgenstern, Burt, Porter and Craib,
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 Los Angeles Unified School District violated section 3543.5 of the Educational Employment Relations Act (EERA) (Gov. Code sec. 3540 et seq.). The Board agent concluded that the charge must be deferred to arbitration in accordance with EERA section 3541.5(a) and applicable Board precedent.

We have reviewed the 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-2354 is hereby
DISMISSED.

By the BOARD

PUBLIC EMPLOYMENT RELATIONS BOARD

HEADQUARTERS OFFICE

1031 18TH STREET

SACRAMENTO, CALIFORNIA 95814

(916) 322-3088



June 24, 1986

Mr. Bruce Lee Caukin

Re: Caukin v. Los Angeles Unified School District,
Case No. LA-CE-2354, First Amended Charge

Dear Mr. Caukin:

You have filed a First Amended Charge alleging that the Respondent Los Angeles Unified School District violated the Educational Employment Relations Act (EERA) by discriminating against you and by interfering with your exercise of rights under the EERA when it transferred you from your position as teacher at Virgil Junior High School to a position at Irving Junior High School. The employer's conduct is alleged to be in reprisal against you for complaining to District administrators about the manner in which your principal runs the school and for your filing grievances.

I indicated to you in my attached letter dated June 5, 1986, that the above-referenced charge was subject to deferral to arbitration. 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 the charge or withdrew it prior to June 19, 1986, it would be dismissed.

I have not received either a request for withdrawal or an amended charge and am therefore dismissing the charge based on the facts and reasons contained in my June 5, 1986 letter. Such dismissal is without prejudice to the Charging Party's right, after arbitration, to seek a repugnancy review by PERB of the arbitrator's decision under the Dry Creek criteria.

(Dry Creek Joint Elementary School District (1980) PERB Order No. Ad-81a, discussed in my June 5, 1986 letter.) See PERB Regulation 32661; Los Angeles Unified School District (1982) PERB Decision No. 218.

Mr. Bruce Lee Caukin
June 24, 1986
Page 2

Right to Appeal

Pursuant to Public Employment Relations Board regulations, 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 (California Administrative Code, title 8. section 32635(a)). To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) on July 14, 1986, or sent by telegraph, certified or Express United States mail postmarked not later than July 14, 1986 (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 copies of a statement in opposition within twenty 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 each copy of a document served upon a party or 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 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).

Mr Mr. Bruce Lee Caukin
June 24, 1986
Page 3

Final Date

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

Sincerely.

JEFFREY SLOAN
Acting General Counsel

By
~~Jeff~~ **Jorge A. Leon**
Staff Attorney

Attachment

cc:

Mr. Bruce Lee Caukin
June 5, 1986
Page 2

Section 3541.5(a) of EERA states in pertinent part:

. . . the board shall not do either of the following: . . . (2) issue a complaint against conduct also prohibited by the provisions of the agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted, either by settlement or binding arbitration.

PERB Regulation 32620(b)(5)¹ requires the Board Agent processing the charge to "(d)ismiss the charge or any part thereof as provided in Section 32630 if . . . it is determined that a complaint may not be issued in light of Government Code sections 3514.5, 3541.5 or 3563.2 or because a dispute arising under HEERA is subject to final and binding arbitration." In Dry Creek Joint Elementary School District (7/21/80) PERB Order No. Ad-81a. the Public Employment Relations Board (PERB) explained that:

[W]hile there is no statutory deferral requirement imposed on the National Labor Relations Board (hereafter NLRB), that agency has voluntarily adopted such a policy both with regard to post-arbitral and pre-arbitral award situations. (Footnote omitted.) EERA section 3541.5(a) essentially codifies the policy developed by the NLRB regarding deferral to arbitration proceedings and awards. It is appropriate, therefore, to look for guidance to the private sector. (Footnote to Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608.)

In Collyer Insulated Wire 192 NLRB 837, 77 LRRM 1931 (1971) and subsequent cases, the NLRB articulated standards under which deferral is appropriate in prearbitral situations. These

¹PERB Regulations are codified in the California Administrative Code, title 8.

requirements are: (1) the dispute must arise within a stable collective bargaining relationship where there is no enmity by the respondent toward the charging party; (2) the respondent must be ready and willing to proceed to arbitration and must waive contract-based procedural defenses; and (3) the contract and its meaning must lie at the center of the dispute.

These standards are met with respect to this case. First, no evidence has been produced to indicate that the parties are not operating within a stable collective bargaining relationship. Second, by a letter from its representative, Mr. Richard Fisher, dated June 3, 1986 (Exhibit 1), the respondent has indicated its willingness to proceed to arbitration and to waive all procedural defenses.

Finally, the issue raised by this charge that the Respondent's transfer of you was in retaliation for your complaints and grievances directly involves an interpretation of Article V, Section 22 and Article XI regarding transfers of the collective bargaining agreement. Accordingly, this charge must be deferred to arbitration and will be dismissed. Such dismissal is without prejudice to the charging party's right, after arbitration, to seek a repugnancy review by PERB of the arbitrator's decision under the Dry Creek criteria. See EERA section 3541.5; Board Rule 32661; Los Angeles Unified School District (6/30/82) PERB Decision No. 218; Dry Creek Joint Elementary School District, supra.

If you feel that there are facts which would require a different conclusion than the one explained above, please amend the charge accordingly. This amended charge should be prepared on a standard PERB unfair practice charge form clearly labeled Second 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 June 19, 1986, I shall dismiss your charge without leave to amend. If you have any questions on how to proceed, please call me at (916) 323-8015.

Sincerely yours.

Jorge Leon
Staff Attorney

O'MELVENY & MYERS

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WRITER'S DIRECT DIAL NUMBER:

C213) 669-7222

June
3rd
1986

OUR FILE NUMBER

520,000-145

Jorge A. Leon, Esq.
Staff Attorney
Public Employment Relations Board
1031 18th Street, Suite 200
Sacramento, CA 95814

Re Bruce Lee Caukin v. L.A. Unified School District
(PERB Case No. LA-CE-2354)

Dear Mr. Leon:

Confirming our conversation of today, the District has agreed to arbitrate the above-captioned dispute, which relates to the Notice of Unsatisfactory Act and transfer of Mr. Caukin. The District has waived all contractual procedural defenses to arbitration, including any Untimeliness defenses. The matter has already been scheduled for arbitration. The case should therefore be deferred to arbitration.

Very truly yours.

Richard N. Fisher

RNF:mg

cc: Ms. Shirley Woo