

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



TONY PETRICH,)
)
 Charging Party,) Case No. LA-CO-338
)
 v.) PERB Decision No. 598
)
 ASSOCIATED TEACHERS OF METROPOLITAN) December 22, 1986
 RIVERSIDE,)
)
 Respondent.)
)
 _____)

Appearance; Tony Petrich, 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 Charging Party of the Board agent's dismissal, attached hereto, of his charge alleging that the Associated Teachers of Metropolitan Riverside violated section 3543.6(a) and (b) of the Educational Employment Relations Act (Gov. Code sec. 3540 et seq.).

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-CO-338 is
DISMISSED WITHOUT LEAVE TO AMEND.

By the BOARD.

PUBLIC EMPLOYMENT RELATIONS BOARD

HEADQUARTERS OFFICE

1031 18th STREET

SACRAMENTO, CALIFORNIA 95814

(916) 322-3098



July 31, 1986

Tony Petrich

Re: Tony Petrich v. Associated Teachers of Metropolitan
Riverside. Case No. LA-CO-338

You have filed a charge against the Associated Teachers of Metropolitan Riverside (ATMR) alleging that it has violated Educational Employment Relations Act sections 3543.6(a) and (b) by: (1) causing the Riverside Unified School District (District) to issue derogatory memos against you on two occasions and (2) removing union material from a bulletin board at Woodcrest Elementary School.

I indicated to you in my attached letter dated July 21, 1986, that the charge did not state a prima facie case. 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 July 30, 1986, they would be dismissed.

I have not received either a request for withdrawal or an amended charge and am therefore dismissing those allegations which fail to state a prima facie case based on the facts and reasons contained in my July 21, 1986 letter.

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 August 20, 1986, or sent by telegraph, certified or Express United States mail postmarked not later than August 20, 1986 (section 32135). The Board's address is:

Mr. Tony Petrich
July 31, 1986
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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).

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
General Counsel

By
Jorge A. Leon
Staff Attorney

Attachment

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PUBLIC EMPLOYMENT RELATIONS BOARD

HEADQUARTERS OFFICE

1031 18TH STREET

SACRAMENTO, CALIFORNIA 95814

(916) 322-3088



July 21. 1986

Tony Petrich

Re: Tony Petrich v. Associated Teachers of Metropolitan
Riverside. Case No. LA-CO-338

You have filed a charge against the Associated Teachers of Metropolitan Riverside (ATMR) alleging that it has violated Educational Employment Relations Act sections 3543.6 (a) and (b) by: (1) causing the Riverside Unified School District (District) to issue derogatory memos against you on two occasions and (2) removing union material from a bulletin board at Woodcrest Elementary School.

My investigation revealed the following information. Ann Lisby and Beckey Porter are employed as teachers by the District. Lisby teaches at Woodcrest Elementary School and Porter teaches at North High School. On December 7, 1984, you were placing "several materials" on the bulletin board at Woodcrest which is provided by the District for the California School Employees Association (CSEA), of which you are a member. Lisby came to you and asked you to help move a piano. The two of you engaged in a discussion about when you would be able to do so. Four days later, on December 11, 1984, you received a memorandum from Principal Sund which included a statement that you were engaged in union activity during work time on December 7. The memo was based upon information provided to Sund by Lisby.

You allege that this conduct constitutes an attempt by ATMR to cause the District to violate the EERA and that it constitutes interference by ATMR with your exercise of rights.

On February 7, 1985, you returned to work after an 11-day absence due to illness. You discovered that day that "all of the CSEA materials" had been removed from the CSEA bulletin board at Woodcrest Elementary. You spoke with Barbara Boettcher, CSEA site steward, about the matter. She told you that while you were away, your "stuff fell off the wall." You do not allege in the charge that an agent of CSEA removed the material. You do not allege that an agent of ATMR removed the material. Nor do you allege that an agent of the District removed the material. You do state that the materials were never returned to you.

On June 20, 1985. North High School Principal Wolf gave you a derogatory memo based on information given him by ATMR member Porter regarding inappropriate comments which Porter alleges you made to her such as calling her "sexy lady" and "my little puppy dog." Two days earlier, at a District Board meeting, the ATMR vice-president had been chastised by "a member of the public" for "accepting subsidization [sic] from the District" for certain union activities.¹ Your charge implies that Porter was motivated by that public criticism against the ATMR vice-president to report your alleged comments to Wolf, in turn causing him to issue you the derogatory memo.

You assert that Lisby and Porter acted on these occasions as agents of ATMR. In support of that assertion you offer only that they have the right to act as agents of ATMR. a labor organization under EERA section 3543.

Analysis

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

. . . the board shall not do either of the following: (1) issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge; . . .

The charge was filed on August 27. 1985. PERB is barred by the above provision from issuing a complaint respecting incidents which occurred prior to February 27. 1985. The allegations asserting: (1) that ATMR (through Lisby) caused the District to violate the EERA and that it interfered with your exercise of rights, which you learned about on December 11. 1984. and (2) that CSEA removed literature from the bulletin board which act you learned about on February 7. 1985 are time-barred. Both incidents occurred outside of the six-month filing period. For this reason alone, it appears that the charge does not state a prima facie case. However, further deficiencies in the allegations are discussed below.

Regarding the Lisby-prompted memorandum, there are no facts in the charge supporting an inference that Lisby acted as an agent

1You have not provided the name of ATMR's vice-president, but during our telephone discussions you clarified that it was not Becky Porter.

of the ATMR when she allegedly reported your union activity to Sund. During the investigation of this charge, you have been unable to present any fact⁶ which would support such an inference. The charge relies on the assertion that Lisby has a right under the EERA to participate in ATMR's activities and to act on behalf of ATMR to support the proposition that she did so in December 1984. In the absence of any facts supporting this proposition, the allegation that Lisby acted on behalf of ATMR does not present a prima facie case of an EERA violation by the ATMR.

As to the removal of materials from the CSEA bulletin board, the charge does not attribute the removal to any person or entity, much less the Respondent. The only factual information you have provided regarding the material's disappearance concerns a conversation with a CSEA site steward who told you that the material had fallen. This is insufficient to support an inference that ATMR had anything at all to do with the materials' disappearance. For these reasons, this allegations fails to set forth a prima facie case of a violation of the EERA by ATMR.

The final allegation contained in the charge concerns Porter's assertions to Principal Wolf which led to Wolf's issuance of a derogatory memo to you. This allegation was filed within the six-month filing period set forth in EERA section 3541.5(a). and is therefore timely. However, as with the Lisby incident, there is no factual support for the proposition that Porter acted as an agent of ATMR when she reported the alleged inappropriate comments to Wolf. Under such circumstances, the conduct cannot be attributed to ATMR.

Moreover, there are no facts which connect the public criticism of ATMR's vice-president to Porter's action in reporting your comments to Principal Wolf. You do not allege that Porter was even aware of the public criticism. Absent such a connection, it cannot be inferred that ATMR engaged in conduct which interferes with your exercise of rights.

Finally, even if it could be concluded that Porter was acting on behalf of ATMR and that she was motivated by the public criticism at the Board meeting to urge Wolf to issue you a derogatory memo, the conduct in which you were engaged - allegedly making inappropriate comments to Porter -- is not protected by the Government Code. For these reasons, the

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allegation fails to present a prima facie case of a violation of the EERA by ATMR.

For these reasons, the charge 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 July 29, 1986, I shall dismiss your charge. If you have any questions on how to proceed, please call me at (916) 322-3198.

Sincerely.

Jorge Leon
Staff Attorney

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