

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ROBERT RAY BRADLEY,)	
)	
Charging Party,)	Case No. LA-CE-2833
)	
v.)	PERB Decision No. 761
)	
LOS ANGELES COMMUNITY COLLEGE)	September 13, 1989
DISTRICT,)	
)	
Respondent.)	
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Appearance: Robert Ray Bradley, on his own behalf.

Before Hesse, Chairperson; Porter, Craib, Shank and Camilli,
Members.

DECISION AND ORDER

This case is before the Public Employment Relations Board (Board) on appeal by the charging party of a Board agent's dismissal (attached hereto) of his charge that the respondent violated section 3543.5 of the Educational Employment Relations Act (Gov. Code sec. 3540 et seq.). We have reviewed the dismissal and, finding it free of prejudicial error, adopt it as the Decision of the Board itself.

The unfair practice charge in Case No. LA-CE-2833 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

By the BOARD

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Boulevard, Suite 650
Los Angeles, CA 90010-2334
(213)736-3127



May 19, 1989

Robert Ray Bradley

RE: DISMISSAL AND REFUSAL TO ISSUE COMPLAINT, Unfair Practice
Charge No. LA-CE-2833, Robert Ray Bradley v. Los Angeles
Community College District

Dear Mr. Bradley:

I indicated to you in my attached letter dated May 8, 1989, 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 May 18, 1989, 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 May 8 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.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing (California Administrative Code, title 8, section 32135). Code of Civil Procedure section 1013 shall apply. 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 (California Administrative Code, title 8, 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 California Administrative Code, title 8, 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 (California Administrative Code, title 8, 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,

CHRISTINE A. BOLOGNA
General Counsel

By _____

Thomas J. ~~Allen~~
Regional Attorney

Attachment

cc: James H. Aguirre

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Boulevard, Suite 650
Los Angeles, CA 90010-2334
(213) 736-3127



May 8, 1989

Robert Ray Bradley

RE: WARNING LETTER, Unfair Practice Charge No. LA-CE-2833,
Robert Ray Bradley v. Los Angeles Community College District

Dear Mr. Bradley:

In the above-referenced charge, you allege that Los Angeles Community College District (District) retaliated against you by releasing confidential information about a grievance you had filed. You allege that this conduct violated Government Code section 3571(a) of the Higher Education Employer-Employee Relations Act (HEERA). The District is covered, however, not by HEERA but the Educational Employment Relations Act (EERA), and the District's alleged conduct is covered by Government Code section 3543.5(a) of EERA.

My investigation of this charge revealed the following information.

On November 7, 1988, you filed a grievance (first grievance) alleging in part that Janet Home of the District's Office Administration department "is scheduled to receive release time so she can develop a microcomputer class which will be taught by the Business Administration department."

On November 9, 1988, John Farhood, the District's Acting Vice President for Academic Affairs, responded to your first grievance with a memorandum that stated in part, "Ms. Home has not been assigned any released time," and asked you, "With the above in mind, do you still wish to pursue the Step I grievance process?" A copy of the memorandum was sent to Lee Sirakides, chairman of the Office Administration department, among others.

On or about November 15, 1988, you filed another grievance (second grievance), alleging in part that Farhood's "release of information concerning my grievance to Lee Sirakides was improper and unnecessary" and that Farhood "knew or had reason to know that the release of confidential information concerning my grievance would cause harassment and intimidation of me." You

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alleged that Farhood's conduct violated Article 6, paragraph E, of the collective bargaining agreement (effective September 30, 1987, through September 29, 1990), in which the District agreed "to comply with state and/or federal laws." (In Article 5, the District more specifically agreed to "comply with all federal and state laws regarding non-discrimination.") You alleged that Farhood's conduct violated the agreement by violating Government Code section 3571(a) "by initiating a reprisal against me for filing a grievance." (As previously noted, the applicable Government Code section is actually 3543.5(a).)

Your second grievance proceeded to a Step One conference, at which you were accompanied by Eloise Crippens of the American Federation of Teachers College Guild (AFT), the exclusive representative for your bargaining unit. You decided to drop the grievance rather than proceed to Step Two (appeal to the College President or Division Head) and Step Three (binding arbitration). You decided to drop the grievance because in the past the AFT had refused to give the approval necessary for other grievances that you had filed to go to binding arbitration. Eloise Crippens did not, however, tell you that the AFT would refuse to give approval for this particular grievance.

Based on the facts stated above, this charge must be dismissed and deferred to arbitration, for the reasons that follow.

Section 3541.5(a)(2) of the Educational Employment Relations Act (EERA) states, in pertinent part, that PERB,

shall not. . . issue a complaint against conduct also prohibited by the provisions of the. . . [collective bargaining agreement in effect] 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.

In Lake Elsinore School District (1987) PERB Decision No. 646, PERB held that this section established a jurisdictional rule requiring that a charge be dismissed and deferred if: (1) the grievance machinery of the agreement covers the matter at issue and culminates in binding arbitration; and (2) the conduct complained of in the unfair practice charge is prohibited by the provisions of the agreement between the parties. PERB Rule 32620(b)(5) (California Administrative Code title 8, section 32620(b)(5)) also requires the investigating board agent

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to dismiss a charge where the allegations are properly deferred to binding arbitration.

These standards are met with respect to this case. First, the grievance machinery of the agreement covers the dispute raised by the unfair practice charge and culminates in binding arbitration. Second, the conduct complained of in this charge, that the District retaliated against you for filing a grievance, is arguably prohibited by Article 6, paragraph E, of the agreement, in which the District agreed to comply with state laws (and also by Article 5, in which the District agreed more specifically to comply with all state laws regarding nondiscrimination). EERA is a state law that prohibits, among other things, discrimination against employees because of their exercise of rights guaranteed by EERA, and filing a grievance pursuant to a negotiated grievance procedure is an exercise of such rights. North Sacramento School District (1982) PERB Decision No. 264.

Section 3541.5(a)(2) of EERA also states that "when the charging party demonstrates that resort to contract grievance procedure would be futile, exhaustion shall not necessary." The identical language appears in Government Code section 3514.5 of the Dills Act, also known as the State Employer-Employee Relations Act (SEERA). PERB has interpreted this language as establishing a standard of futility that may be met if: (1) the exclusive representative is committed to a position in conflict with the grievant's position in the grievance; or (2) the exclusive representative has refused the grievant's request for assistance with the grievance. State of California (Department of Corrections) (1986) PERB Decision No. 561-S; State of California (Department of Development Services) (1985) PERB Order No. Ad-145-S.

Neither part of this standard is met in this case. First, there is no allegation or evidence that AFT approves or condones the District's alleged release of confidential information concerning your first grievance in retaliation for your filing of that grievance. Second, there is no allegation or evidence that you requested AFT's assistance with your second grievance and AFT refused. There is therefore no demonstration that use of the ... grievance procedure was futile as a means of having your second grievance resolved by binding arbitration.

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

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criteria. See PERB Regulation 32661 (California Administrative Code, title 8, section 32661); Los Angeles Unified School District (1982) PERB Decision No. 218; Dry Creek Joint Elementary School District (1980) PERB Order No. Ad-81a.

If you feel that there are any factual inaccuracies in this letter or any additional 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 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 May 18, 1989, I shall dismiss your charge without leave to amend. If you have any questions on how to proceed, please call me at (213) 736-3127.

Sincerely,

Thomas J. Alien
Regional Attorney