



STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

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|-----------------------------|---|-----------------------|
| TONY PETRICH, |) | |
| |) | |
| Charging Party, |) | Case No. LA-CO-3 3 9 |
| |) | |
| v. |) | PERB Decision No. 767 |
| |) | |
| CALIFORNIA SCHOOL EMPLOYEES |) | September 18, 1989 |
| ASSOCIATION, |) | |
| |) | |
| Respondent. |) | |

Appearance: Tony Petrich, on his own behalf.
Before Porter, Craib and Camilli, Members.

DECISION

PORTER, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Tony Petrich (Petrich) of the Board agent's dismissal of a portion of his unfair practice charge against the California School Employees Association (CSEA). The Board agent found that Petrich's allegation that CSEA threatened to impose reprisals on Petrich because he engaged in protected activity failed to state a prima facie violation of section 3543.6(b) of the Educational Employment Relations Act (EERA).¹ We agree that Petrich has

¹**EERA** is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3543.6 provides, in relevant part:

- It shall be unlawful for an employee organization to:
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- (b) Impose or threaten to impose reprisals

failed to state a prima facie violation of section 3543.6(b) inasmuch as we find that Petrich's conduct did not constitute protected activity.

FACTUAL SUMMARY

Petrich filed a unit modification petition seeking to remove 115 employees from the existing bargaining unit represented by CSEA at the Riverside Unified School District where he was employed. The PERB regional director rejected the petition on the ground that Petrich had no authorization from CSEA to file the petition, nor did Petrich have independent standing to file the petition. Petrich appealed the rejection of the petition to the Board itself, and the Board affirmed the rejection of the unit modification petition. (Riverside Unified School District (Petrich) (1985) PERB Order No. Ad-148a.)

Meanwhile, CSEA notified Petrich by mail that his unauthorized conduct was detrimental to CSEA and its members, and was in violation of CSEA's internal rules. Petrich was further informed that similar conduct in the future could result in CSEA taking disciplinary action against him.

Petrich filed a charge against CSEA alleging that CSEA imposed a reprisal on him (i.e., the letter from CSEA), thereby interfering with his exercise of protected rights.

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.

DISCUSSION

The issue to be determined is whether Petrich's individual or unauthorized filing of the unit modification petition constitutes protected conduct. Government Code section 3543, which prescribes the rights of public school employees that are protected by EERA, does not give a public school employee the right to file a unit modification petition. PERB Regulation 32781 (Cal. Admin. Code, tit. 8, sec. 32781) affords the right to petition for a unit modification only to an exclusive representative employee organization and/or to a public school employer. Accordingly, this Board, in Riverside Unified School District (Petrich), supra, PERB Order No. Ad-148a, held that the charging party did not have standing to file the unit modification petition. We, therefore, find that Petrich's individual or unauthorized filing of the petition did not constitute the exercise of any right guaranteed to him under EERA.

The conduct at issue here is to be distinguished from the situation where an individual employee files an unfair practice charge with PERB, which filing is an expressly granted right pursuant to EERA section 3541.5(a). Where an individual exercises a statutory right, such as in the case of filing an unfair practice charge, the merit (or lack thereof) of the charge is immaterial to a determination of the status of the conduct. In other words, the conduct is protected even if the charge is found to be meritless.

ORDER

For the reasons stated above, the Board hereby DISMISSES WITHOUT LEAVE TO AMEND the portion of the charge alleging a violation of section 3543.6(b) of EERA in Case No. LA-CO-339.

Members Craib and Camilli joined in this Decision.