STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ASSOCIATION OF PUBLIC SCHOOL SUPERVISORY EMPLOYEES,	)	
Charging Party,	)	Case No. LA-CE-2944
v.	)	PERB Decision No. 835
LOS ANGELES UNIFIED SCHOOL DISTRICT,	)	August 30, 1990
Respondent.	)	

Appearances: Wanda J. Robinson, Labor Relations Representative, for Association of Public School Supervisory Employees; Jesus Estrada-Melendez, Assistant Legal Adviser, for Los Angeles Unified School District.

Before Hesse, Chairperson; Craib and Camilli, Members.

DECISION

CRAIB, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Association of Public School Supervisory Employees (APSSE) of a Board agent's dismissal of its unfair practice charge against the Los Angeles Unified School District (District). The allegations stem initially from a predisciplinary meeting at which an APSSE member, Edrean Mims (accompanied by an APSSE representative, Wanda Robinson), was confronted with complaints that she had been discourteous and had made racist remarks. The District's investigation eventually led to the demotion of Mims from Plant Manager II to Custodian.

The allegations are as follows: (1) Mims' procedural due process rights enunciated in Skelly v. State Personnel Board (1975) 15 Cal.3d 194 [124 Cal.Rptr. 14] (Skelly) were violated;

(2) APSSE's "right to information" was violated by the District's failure to provide copies of the complaints against Mims; (3) the District unilaterally changed its policy with respect to providing information; (4) the District unilaterally changed its discipline policy by demoting Mims rather than suspending her; (5) the District unilaterally changed its discipline policy by transferring the duty of conducting Skelly hearings from a representative within the Business Services Department to one within the Operations Branch Department, where Mims works.

We have reviewed the Board agent's dismissal and APSSE's appeal and, as discussed below, affirm the dismissal of the unfair practice charge.[1]

DISCUSSION

Procedural Due Process

In Skelly, the California Supreme Court delineated certain procedural due process protections a public employer must provide a civil service employee before taking punitive action. The protections enunciated in the Skelly case are based on the Due Process Clauses of the California and United States constitutions. The Board agent correctly noted that PERB only has jurisdiction to enforce the statutes it is charged with

[1]In a related matter, the District appeals the rejection of its response to APSSE's appeal. The Board Appeals Assistant rejected the filing as untimely. However, the District has invited the Board to disregard its appeal if the Board intends to dismiss the charge on its merits. As we find that the dismissal of APSSE's unfair practice charge must be affirmed, it is unnecessary to rule on the District's appeal and, for that reason, we shall dismiss the appeal.

administering[2] and has no jurisdiction to enforce constitutional protections. On appeal, APSSE acknowledges PERB's limited jurisdiction, but argues that its claim should nonetheless be cognizable under EERA because the Skelly requirements are essential to the employee organization's role in representing its members.

There is no precedent to support the incorporation of Skelly requirements into the duties required of an employer under EERA, and we find no basis for adopting such requirements. In essence, what APSSE seeks in this case is a requirement that the employer provide information concerning the discipline of an employee to his or her employee organization, even in the absence of a request for such information. An exclusive representative generally has the right to information that is necessary and relevant to the fulfillment of its representational obligations.[3] (See, e.g., Stockton Unified School District (1980) PERB Decision No. 143, p. 13.) We fail to see how any right to information arising under EERA is jeopardized by the traditional labor law requirement that the employee organization first request the information. (See, e.g., Oakland Unified School District (1982)

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[2]In this case, the applicable statute is the Educational Employment Relations Act (EERA). EERA is codified at Government Code section 3540 et seq.

[3]APSSE is a nonexclusive representative. While the Board has not articulated the scope of a nonexclusive representative's right to information, and we need not do so here, for the purposes of this case we simply note that any such right could not logically be more expansive than that conferred upon exclusive representatives.

PERB Decision No. 275, p. 18; Morris, The Developing Labor Law (2d ed. 1983) pp. 611-612.)

APSSE's Right to Information

At the predisciplinary meeting, which was held on October 4, 1989, APSSE representative Robinson was allegedly denied copies of complaints against Mims. However, Robinson was allowed to look at the complaints during the meeting. Allegedly, APSSE never received copies of the statements for use in preparing Mims' defense at her Skelly hearing.

The Board agent concluded that no prima facie denial of information was alleged because Robinson was allowed to view the complaints at the October 4 meeting and no request for the information was made thereafter. On appeal, APSSE argues that EERA provides a right to information for nonexclusive representatives that should be construed to require that all information to be used in a disciplinary action against an employee be provided to his or her employee organization. Again, the claim is made that a request by the employee organization should not be required. For the reasons stated above, we find that such a request is required under EERA. Since it is undisputed that Robinson was allowed to review the complaints against Mims at the October 4 meeting and APSSE failed to allege that the information was thereafter requested for use in preparing for Mims' Skelly hearing, we find that no prima facie denial of information has been alleged.

The Board agent stated that the charge appeared to also allege a change in policy regarding the information provided to nonexclusive representatives, but she dismissed this allegation for failure to include facts to support it. From a reading of the charge, it is not clear if, in fact, APSSE did allege such a change in policy. Nor is it clear if APSSE is appealing the dismissal of this allegation. Nevertheless, as we find no facts have been alleged to sufficiently identify such a policy or to explain how such a policy was changed, we affirm the dismissal of this allegation.

Changes in Discipline Policy

APSSE claims that the District's decision to demote Mims, rather than suspend her, constitutes a change in policy. In Los Angeles Unified School District (1983) PERB Decision No. 285, at page 8, the Board outlined a public school employer's obligations under EERA vis-a-vis nonexclusive representatives:

> . . . whereas the public school employer and representatives of recognized or certified employee organizations have the mutual obligation to meet and negotiate in good faith with regard to matters within the scope of representation (section 3543.5), the Board finds that the obligation imposed by EERA on public school employers with respect to a nonexclusive representative is to provide notice and a reasonable opportunity to meet and discuss wages, fringe benefits, and other matters of fundamental concern to the employment relationship prior to the time the employer reaches a decision on such matter.

APSSE provided the Board agent with a District policy guide entitled, "A Positive Approach to Classified Employee Discipline." The policy guide provides, in pertinent part:

> The appropriateness of any kind of disciplinary action depends on the individual situation - Examples:
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> a. Suspension. Use with an employee who fails repeatedly to perform or complete assigned duties and who, after repeated warnings, does not alter such behavior . . . .
>
> b. Demotion. Use when an employee is incapable of performing the full range of duties of the present job even though: 1) work attitude is good, 2) the employee can perform some of the prescribed duties in a satisfactory manner, 3) the employee was fully satisfactory in a lower-level position.
>
> . . . . . .
>
> In all cases, the amount and type of discipline imposed should be related to the nature and severity of the offense committed and the employee's past work history (good or bad); length of service, and prior discipline, if any.
> (Emphasis added.)

The Board agent concluded that, assuming the meet and discuss obligation pertained to the subject of discipline policies, the charge failed to reflect how the demotion of Mims was inconsistent with the policy guide quoted above. On appeal, APSSE simply reasserts its claim that the demotion reflects a change in policy. We agree with the Board agent that the facts alleged fail to indicate that the District deviated from the policy quoted above. Moreover, even if Mims' demotion arguably constituted a deviation from that policy, there are no facts alleged to indicate that the District's conduct amounted to a change in policy. In Grant Joint Union High School District (1982) PERB Decision No. 196, at page 9, the Board defined a

change in policy as having a generalized effect or continuing impact upon terms and conditions of employment. This was contrasted with a mere default in a contractual obligation. APSSE's allegation, which is, in essence, a claim that the disciplinary action taken against Mims was unduly severe, fails to conform to the definition of a policy change.

Lastly, APSSE asserts that the District made a unilateral change in its discipline policies by reassigning the task of conducting Skelly hearing to a managerial employee in Mims' department, thereby destroying any semblance of impartiality. No other facts are alleged to support this allegation. The Board agent dismissed this allegation, finding that APSSE failed to allege facts establishing that the Skelly hearing would no longer be impartial or that the reassignment otherwise constituted an alteration of Skelly procedures of sufficient magnitude to invoke a meet and discuss obligation, assuming such an obligation would otherwise exist. As we find this allegation to be based on mere speculation, without any supporting facts, we affirm the dismissal.[4]

ORDER

The unfair practice charge in Case No. LA-CE-2944 is hereby DISMISSED WITHOUT LEAVE TO AMEND. The District's appeal from the

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[4] The Board agent concluded that procedural changes in an employer's discipline policies would trigger a meet and discuss obligation. As it is unnecessary to decide if this matter would fall within the parameters of the public school employer's obligation to meet and discuss with a nonexclusive representative, we decline to do so.

rejection of its response to the appeal of the dismissal of the unfair practice charge is hereby DISMISSED.

Chairperson Hesse and Member Camilli joined in this Decision.