

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



COVINA UNIFIED EDUCATION ASSOCIATION, CTA/NEA,)	
)	
Charging Party,)	Case No. LA-CE-3199
)	
v.)	PERB Decision No. 985
)	
COVINA-VALLEY UNIFIED SCHOOL DISTRICT)	March 26, 1993
)	
Respondent.)	

Appearances: California Teachers Association by Charles R. Gustafson, Attorney, for Covina Unified Education Association, CTA/NEA; Gibson, Dunn & Crutcher by Kenneth W. Anderson, Attorney, for Covina-Valley Unified School District.

Before Blair, Chair; Caffrey and Carlyle, Members.

DECISION AND ORDER

CARLYLE, Member: This case is before the Public Employment Relations Board (Board) on appeal by the Covina Unified Education Association, CTA/NEA of the Board agent's dismissal, attached hereto, of its charge alleging that the Covina-Valley Unified School District violated section 3543.5(a), (b) and (d) of the Educational Employment Relations Act (EERA). *

¹EERA is codified at Government Code section 3540 et seq. Section 3543.5 states, in pertinent part:

It shall be unlawful for a public school employer to do any of the following:

- (a) Impose or threaten to impose reprisals 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. For purposes of this subdivision, "employee" includes an

The Board has reviewed the Board agent's warning and dismissal letters, and finding them to be free of prejudicial error, adopts them as the decision of the Board itself.

The unfair practice charge in Case No. LA-CE-3199 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chair Blair and Member Caffrey joined in this Decision.

applicant for employment or reemployment.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



January 8, 1993

Charles R. Gustafson, Esq.
California Teachers Association
P.O. Box 92888
Los Angeles, CA 90009-2888

Re: DISMISSAL AND REFUSAL TO ISSUE COMPLAINT, Unfair
Practice Charge No. LA-CE-3199, Covina Unified
Education Association. CTA/NEA v. Covina-Valley Unified
School District

Dear Mr. Gustafson:

In the above-referenced charge, the Covina Unified Education Association, CTA/NEA (Association) alleges that the Covina-Valley Unified School District (District) interfered with employees and the Association. This conduct is alleged to violate Government Code sections 3543.5(a), (b) and (d) of the Educational Employment Relations Act (EERA).

I indicated to you, in my attached letter dated December 24, 1992, that the above-referenced 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. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to January 8, 1993, the charge would be dismissed.

On January 7, 1993, I received from you an amended charge, adding two allegations to the original charge: (1) that the Association was first informed of the District's alleged conduct on or after April 23, 1992, and (2) that the District's alleged conduct intimidated several unit members and caused them to refuse to become members of the Association. The first of these two additional allegations appears to cure the possible untimeliness of part of the charge. The second allegation, however, is unspecific and conclusory and does not cure the overall failure of the charge to state a prima facie case, because it does not allege facts from which it can be objectively determined that the District's alleged conduct contained a threat of reprisal or

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force or a promise of benefit. Therefore, I am dismissing the charge, based on the reasons contained in my December 24 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. (Cal. Code of Regs., tit. 8, sec. 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 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. (Cal. Code of Regs., tit. 8, sec. 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 (20) calendar days following the date of service of the appeal. (Cal. Code of Regs., tit. 8, sec. 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 Cal. Code of Regs., tit. 8, sec. 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 (3) 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

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party. (Cal. Code of Regs., tit. 8, sec. 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,

ROBERT THOMPSON
Deputy General Counsel

By Thomas J. Allen
THOMAS J. ALLEN
Regional Attorney

Attachment

cc: Kenneth W. Anderson

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Blvd., Suite 650
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(213) 736-3127



December 24, 1992

Charles R. Gustafson, Esq.
California Teachers Association
P.O. Box 92888
Los Angeles, CA 90009-2888

Re: WARNING LETTER, Unfair Practice Charge No. LA-CE-3199,
Covina Unified Education Association, CTA/NEA v.
Covina-Valley Unified School District

Dear Mr. Gustafson:

In the above-referenced charge, the Covina Unified Education Association, CTA/NEA (Association) alleges that the Covina-Valley Unified School District (District) interfered with employees and the Association. This conduct is alleged to violate Government Code sections 3543.5(a), (b) and (d) of the Educational Employment Relations Act (EERA).

My investigation of the charge reveals the following facts.

The charge, filed on June 9, 1992, alleges in relevant part as follows, at paragraphs 3-5:

3. On or about April 21, 1992, at a regular staff meeting, the principal of Covina Elementary School, displaying great anti-union animus, criticized the Association and denounced Association activities, saying among other things: teachers are misinformed by the Association, the District would be happy to offer better insurance if they could afford it; Association behavior reminded him or his old labor union days; he thought the same of the meeting "last night" as the union meetings he was forced to attend when he was 18 or 19 years old. Additionally, he sent out a flyer critical of union picketing, a copy of which is attached hereto marked

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Exhibit A.¹

4. The Association is informed and believes that the principal of Covina Elementary-School (a) has also done anti-association politicking in the halls of the school site, (b) that he told a fairly new teacher at the beginning of the year that he did not have much faith in the Association team, and he strongly implied that Association leaders were not to be heeded nor respected, and (c) that he stated he was going to meet with his

¹The flyer stated in full as follows:

CONGRATULATIONS! !

I believe that we had a most satisfactory turnout and open house. Most rooms and the SCIENCE FAIR were busy all evening.

One important fact stood out . . . parents repeatedly told me how impressed they were with the amount of work and the quality of the work their kids are doing at Covina Elementary.

Parents were also impressed with the hard work teachers do and were appreciative of what is being done for their children.

Twenty or more parents or sets of parents made it a point to tell me they were not impressed with the picketing and a few asked why "they" were picketing our school. One lady said, "I'm sure glad our teachers aren't doing that, it's embarrassing for the kids to see their teachers do that."

Overall, it was a very successful evening thanks to all of you who have worked hard all year to provide the best you can for our students. Thank you for all you do.

Sincerely,

Ron

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attorney to find out what he could do to "impede CUEA activities."²

5. On April 23, 1992, the Association wrote to the Superintendent concerning the above activities of the Covina Elementary Principal, a copy of which is attached hereto marked Exhibit B.³ To date the Association has received no reply from the District.⁴ By

²No dates are given for this alleged conduct. It is unclear whether "the beginning of the year" means the beginning of the school year (July 1, 1991) or the beginning of the calendar year (January 1, 1992).

³The letter stated in full as follows:

It has been brought to my attention that Ron Iannone, principal at Covina Elementary School, used last Tuesday's staff meeting to criticize and discourage participation in CUEA activities. As you are no doubt aware, such action by an administrator constitutes interference in Association activities and is a violation of the EERA.

Please immediately advise administrators that such interference is inappropriate and unlawful and must not recur. Also, please provide me with a copy of this advisory so that we will know that you do not condone such interference and have done your best to assure that it will not happen again.

⁴During the investigation of this charge, the District produced a copy of a letter dated May 14, 1992, from the District Superintendent to the Association President. It appears from the allegations that this letter was not received by the Association. It stated in full as follows:

I am writing in response to your letter of April 23 concerning alleged activities of Dr. Ron Iannone, Principal of Covina Elementary School. I don't react to allegations made about a teacher or any employee without knowing specific details of any incident. And I certainly would not issue any written

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failing to repudiate the activities of the principal, the District has ratified this conduct.

Based on the facts stated above, the charge does not state a prima facie violation of the EERA within the jurisdiction of the Public Employment Relations Board (PERB), for the reasons that follow.

Government Code section 3541.5(a)(1) states that PERB shall not "[i]ssue 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." PERB Regulation 32615(a)(5) (Cal. Code of Regs., title 8, sec. 32615 (a)(5)) requires that a charge contain a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice."

Paragraph 4 of the present charge alleges certain conduct without giving any date. In the absence of a clear statement that this conduct occurred on a date within the six months before the charge was filed (November 14, 1991, to May 14, 1992), the alleged conduct is not within PERB's jurisdiction.

Under Chula Vista City School District (1990) PERB Decision No. 834, an employer has a right of free speech, unless it can be determined by an objective standard that the employer's speech contains a threat of reprisal or force or a promise of benefit. The present charge does not allege facts from which it can be objectively determined that the District's conduct contained such a threat or promise.

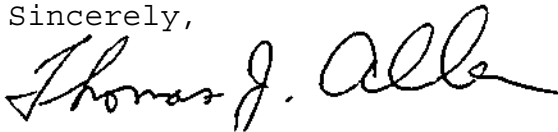
"advisory" to a teacher in the same situation if such vague and non-specific allegations were made in a letter from a parent. I suspect that if I did such a thing, you, as CUEA President, would be unhappy and would indicate that I acted hastily and improperly. Your concern would be justified.

Your letter does not indicate any details of what supposedly transpired. If you have specifics about your allegations that you would care for me to follow up and which are specifically prohibited in any manner, please let me or Ron Matejcek know and we will be happy to look into them.

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For these reasons the charge, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts which would correct the deficiencies explained above, please amend the charge. 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 January 8, 1993, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3127.

Sincerely,

A handwritten signature in cursive script that reads "Thomas J. Allen". The signature is written in dark ink and is positioned above the typed name.

Thomas J. Allen
Regional Attorney