STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

APPLE VALLEY CLASSIFIED EMPLOYEES ASSOCIATION,	)	
Charging Party,	)	Case No. LA-CE-3274
v.	)	PERB Decision No. 1019
APPLE VALLEY UNIFIED SCHOOL DISTRICT,	)	October 21, 1993
Respondent.	)	

Appearance: California Teachers Association, by Charles R. Gustafson, Attorney, for Apple Valley Classified Employees Association.

Before Blair, Chair; Carlyle and Garcia, Members.

DECISION AND ORDER

BLAIR, Chair: This case is before the Public Employment Relations Board (Board) on appeal by the Apple Valley Classified Employees Association of a Board agent's dismissal (attached) of its unfair practice charge. The charge alleged that Apple Valley Unified School District violated section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA)[1] by

[1]EERA 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 applicant for employment or reemployment.

implementing unilateral changes in policy and that these changes were implemented in a discriminatory manner. The Board agent dismissed the charge for failure to state a prima facie case.

The Board has reviewed the entire record in this case and finds the Board agent's dismissal to be free of prejudicial error and adopts it as the decision of the Board itself.

The unfair practice charge in Case No. LA-CE-3274 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Carlyle and Garcia joined in this Decision.

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

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

PUBLIC EMPLOYMENT RELATIONS BOARD

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

June 18, 1993

Charles R. Gustafson, Esq.
California Teachers Association
Post Office Box 92888
Los Angeles, California 90009-2888

Re: DISMISSAL AND REFUSAL TO ISSUE COMPLAINT, Unfair Practice Charge No. LA-CE-3274, Apple Valley Classified Employees Association v. Apple Valley Unified School District

Dear Mr. Gustafson:

I indicated to you, in my attached letter dated June 8, 1993, 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 June 16, 1993, the charge would be dismissed.

On June 17, 1993, you filed a First Amended Charge. With respect to Article 8, paragraph F, of the collective bargaining agreement, the amended charge alleges that the District's interpretation of the contractual language "is not in accord with the intention of the parties expressed at the bargaining table that it apply only to full-time employees." With respect to the alleged unilateral implementation of a requirement that bus drivers commute to a distant location to obtain their assigned vehicles, the amended charge further alleges as follows:

> The District has taken this action as a reprisal on Association leaders and supporters and to discriminate against them and to otherwise interfere with, restrain and coerce them because of their exercise of the right to form, join and participate in the activities of the Association as is evidenced by the District's allowing favored anti-union employees to pickup busses [sic] at a closer location.

Based on the facts stated above, the amended charge still does not state a prima facie violation of the EERA, for the reasons that follow.

Regulation 32615(a)(5) requires that a charge contain a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." The amended charge contains no clear statement of adequate facts but rather a vague statement of unsupported conclusions.

With respect to Article 8, Paragraph F, there is still no apparent ambiguity in the contractual language. The language unambiguously refers to "unit members" and not just to "full-time employees." In the very next two paragraphs of the agreement, the term "unit member" clearly appears to include part-time employees.[1] In the face of the unambiguous contractual language, the amended charge's vague and conclusory allegation about the "intention of the parties," unsupported by clear factual allegations about how, when, by whom and to whom the alleged intention was expressed, is inadequate to state a prima facie case. Cf., Victor Valley Community College District (1986) PERB Decision No. 570.

With respect to the alleged change in commuting requirements, the newly alleged reprisal theory does nothing to correct the deficiencies in the previously alleged unilateral change theory, as discussed in my June 8 letter. Furthermore, the vague and conclusory reprisal allegation is inadequate to state a prima facie case in itself, since it is unsupported by clear factual allegations about the identity of the affected employees, the date and nature of their protected activities, the District's knowledge of those activities, the date and nature of the alleged reprisals, and any facts that demonstrate the nexus between the alleged reprisals and the protected activities. See, e.g., Novato Unified School District (1982) PERB Decision No. 210.

I am therefore dismissing the charge, based on the facts and reasons contained in this letter and my June 8 letter.

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[1]Paragraph G refers in part to "unit members . . . called back to work after completion of their regular assignment," presumably including a part-time assignment. Paragraph H even more clearly refers to a "unit member . . . who desires the increased hours" of a vacant position, presumably including a part-time employee who desires a full-time position.

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 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
Regional Attorney

Attachment

cc: Steven J. Andelson

PUBLIC EMPLOYMENT RELATIONS BOARD

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(213) 736-3127

June 8, 1993

Charles R. Gustafson, Esq.
California Teachers Association
Post Office Box 92888
Los Angeles, California 90009-2888

Re: WARNING LETTER, Unfair Practice Charge No. LA-CE-3274, Apple Valley Classified Employees Association v. Apple Valley Unified School District

Dear Mr. Gustafson:

In the above-referenced charge, filed February 4, 1993, the Apple Valley Classified Employees Association (Association) alleges that the Apple Valley Unified School District (District) made unilateral changes in policy- This conduct is alleged to violate Government Code section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA).

My investigation of this charge reveals the following relevant facts.

The charge alleges as follows, in paragraphs 3 and 4:

> 3. The District unilaterally changed the hours of bus drivers, who work less than full-time or split shifts by "scheduling" unpaid lunch periods. In some instances lunch periods are "scheduled" when the bus drivers are rendering normal paid service to the District. This practice began within the past six months when the District scheduled bus routes for the 1992-93 school year.
>
> 4. At the beginning of the 1992-93 chool [sic], and within the past six months, the District unilaterally changed the hours and compensation of bus drivers by requiring the drivers to commute to a distant location to obtain their assigned vehicles. The district has refused to reimburse them for the increased mileage or to compensate them for the time involved in the commuting.

Article 8, paragraph F, of the collective bargaining agreement between the Association and the District states as follows:

> Lunch Period
>
> The length of time for unit members' lunch period shall be no longer than one hour, nor less than one-half hour and shall be determined and scheduled by the district. [Emphasis added.]

District Personnel Commission Rule 170.4.2 ("Mileage") states as follows:

> Employees who are required to use their own automobiles in performance of their duties and employees who are assigned to more than one (1) site per day shall be reimbursed for all such travel at the current rate of reimbursement as determined by the district for all driving done between arrival at the first location at the beginning of their workday, and the location at the completion of their workday. [Emphasis added.]

There is no allegation or evidence that the District has ever compensated employees for commuting to or from any location before or after the workday.

Since 1987, the District has contracted with the Lucerne Valley Unified School District (LVUSD) to provide bus drivers for the transportation of LVUSD students. The buses for the LVUSD routes have been located in Lucerne Valley, and the drivers assigned to those routes have had to commute, to Lucerne Valley to pick up their buses. The only apparent change in 1992 was that drivers began to bid for routes, including LVUSD routes, rather than be assigned routes. This change was pursuant to Article 13, paragraph B.2, of the collective bargaining agreement:

> Bidding
>
> Each year all route assignments shall be identified by route number, Apple Valley or Lucerne Valley route area, and number of assigned hours/months. All bus drivers shall select their choice of available route assignments in seniority order based on hire date within the bus driver's classification.

Based on the facts stated above, the charge does not state a prima facie violation of the EERA, for the reasons that follow.

In determining whether a party has violated EERA section 3543.5(c), PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. (Stockton Unified School District (1980) PERB Decision No. 143.) Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented before the employer notified the exclusive representative and gave it an opportunity to request negotiations. (Walnut Valley Unified School District (1981) PERB Decision No. 160; Grant Joint Unified High School District (1982) PERB Decision No. 196.)

In the present case, it does not appear that the District implemented any unilateral change in policy. The policy already established by Article 8, paragraph F, of the collective bargaining agreement was that lunch periods "shall be . . . scheduled by the District." The policy already established by Personnel Commission Rule 170.4.2 was that employees would be compensated for driving during the workday, not for commuting. There was no change in the location of buses, and the change in assignments was pursuant to Article 13, paragraph B.2, of the collective bargaining agreement. There thus appears to have been no change in policy about which the District had a further duty to negotiate.

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 June 16, 1993, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3127.

Sincerely,

Thomas J. Allen
Regional Attorney