

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA SCHOOL EMPLOYEES)
ASSOCIATION AND ITS POMONA)
CHAPTER #14,)
)
Charging Party,) Case No. LA-CE-3492
)
v.) PERB Decision No. 1105
)
POMONA UNIFIED SCHOOL DISTRICT,) May 18, 1995
)
Respondent.)
_____)

Appearance: California School Employees Association by Sol Allen, for California School Employees Association and its Pomona Chapter #14.

Before Garcia, Johnson and Caffrey, Members.

DECISION

GARCIA, Member: This case is before the Public Employment Relations Board (Board) on an appeal filed by the California School Employees Association and its Pomona Chapter #14 (Association) of a Board agent's dismissal (attached) of its unfair practice charge for failure to state a prima facie case. In its charge, the Association alleged that the Pomona Unified School District violated section 3543.5(b) and (d) of the Educational Employment Relations Act (EERA) by contributing support to another employee organization.¹

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

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

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

The Board has reviewed the entire record in this case, including the warning and dismissal letters, the Association's unfair practice charge, and its appeal. The Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. LA-CE-3492 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Johnson and Caffrey joined in this Decision.

(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



February 22, 1995

Sol Allen, Labor Relations Representative
California School Employees Association
10211 Trademark Street, Unit A
Rancho Cucamonga, California 91730

Re: DISMISSAL AND REFUSAL TO ISSUE COMPLAINT, Unfair Practice
Charge No. LA-CE-3492, California School Employees
Association and its Pomona Chapter #14 v. Pomona Unified
School District

Dear Mr. Allen:

In the above-referenced charge, the California School Employees Association and its Pomona Chapter #14 (CSEA) alleges that the Pomona Unified School District (District) contributed support to another employee organization. This conduct is alleged to violate Government Code sections 3543.5(b) and (d) of the Educational Employment Relations Act (EERA).

I indicated to you, in my attached letter dated January 26, 1995, 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 February 3, 1995, the charge would be dismissed. I later extended the deadline to February 10, then February 17, and finally February 21, 1995.

I have not received either an amended charge or a request for withdrawal. Therefore, I am dismissing the charge based on the facts and reasons contained in my January 26 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:

LA-CE-3492
February 22, 1995
Page 2

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

PUBLIC EMPLOYMENT RELATIONS BOARD



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



January 26, 1995

Sol Allen, Labor Relations Representative
California School Employees Association
10211 Trademark Street, Unit A
Rancho Cucamonga, California 91730

Re: WARNING LETTER, Unfair Practice Charge No. LA-CE-3492,
California School Employees Association and its Pomona
Chapter #14 v. Pomona Unified School District

Dear Mr. Allen:

In the above-referenced charge, the California School Employees Association and its Pomona Chapter #14 (CSEA) alleges that the Pomona Unified School District (District) contributed support to another employee organization. This conduct is alleged to violate Government Code sections 3543.5(b) and (d) of the Educational Employment Relations Act (EERA) .

My investigation of the charge reveals the following relevant facts.

CSEA is the exclusive representative of a unit of the District's classified employees. In its charge, filed on October 27, 1994, CSEA alleges in relevant part as follows:

On or about October 20, 1994, California School Employees Association [CSEA] received information indicating that District personnel, without authorization from the affected unit members, released the names and home addresses of these employees to the Laborer's International Union of North America (LIUNA), to aid its organizing of classified employees of the District. Unit members then received literature from LIUNA. Among the classified employees whose addresses were released were School Safety Officers, who as Peace Officers, had their safety compromised by the publication of their home addresses to this organization.

On October 21, 1994, the District Director of Classified Personnel issued the following memo to CSEA bargaining unit employees:

It has been brought to my attention that a number of CSEA bargaining unit members received a mailing to their home addresses from a group called, on the return envelope, "P.U.S.D. Classified Employees for Better Representation."

Apparently a number of employees mistakenly thought that the mailing came from the Pomona Unified School District. Please be assured that this is not the case. Further, the District did not authorize the release of employees' home addresses from our records to this group. If it is determined that any District employee released employees' home addresses from our records without authorization, serious disciplinary action will result.

In its response to the charge, the District states that it also launched an investigation into all possible sources of disclosure, in consultation with an independent computer specialist.

In our telephone conversation of January 25, 1995, you told me that you could not name the individual who released the addresses and that it could have been any of 5 payroll employees. You argued that the District should have had safeguards against the release of the addresses.

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

In order to constitute a violation of EERA, alleged conduct must be attributable to an agent of the respondent (in this case, the District) acting within the scope of his or her authority. (Inglewood Unified School District (1990) PERB Decision No. 792.) The present charge does not identify who released the addresses, nor does it allege any facts which show that it was an agent of the District acting within the scope of his or her authority. The charge does not allege facts which show that the District itself was involved in the release of the addresses, or knew about the release at or before the time it was done, or condoned or ratified the release after it was done. On the contrary, the District's memo of October 21, 1994, indicates that the District did not condone or ratify the release of the addresses.

LA-CE-3492
January 26, 1995
Page 3

You have argued that the District was negligent about safeguarding the addresses from release. The charge alleges no facts, however, from which it is apparent how the District was negligent, or even what it could have done to safeguard the addresses more effectively. In any case, there appears to be no legal basis for finding a violation of EERA if a respondent was merely negligent about safeguarding information.¹

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 February 3, 1995, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3127.

Sincerely,

Thomas J. Allen
Regional Attorney

¹In our telephone conversation of January 25, 1995, you argued that the release of the addresses violated Government Code section 6254.3, but that Government Code section is neither part of EERA nor incorporated by reference.