

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



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| ASSOCIATION OF PUBLIC SCHOOL SUPERVISORY EMPLOYEES, |) | |
| |) | |
| Charging Party, |) | Case No. LA-CE-3512 |
| |) | |
| v. |) | PERB Decision No. 1153 |
| |) | |
| LOS ANGELES UNIFIED SCHOOL DISTRICT, |) | June 6, 1996 |
| |) | |
| Respondent. |) | |
| <hr/> | | |

Appearance: Association of Public School Supervisory Employees
by Wanda Robinson, Labor Relations Representative.

Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION AND ORDER

JOHNSON, Member: This case is before the Public Employment Relations Board (Board) on appeal of a Board agent's dismissal (attached) of an unfair practice charge filed by the Association of Public School Supervisory Employees (APSSE). In its charge, APSSE alleged that the Los Angeles Unified School District violated section 3543.5(a) and (b) of the Educational Employment Relations Act (EERA)¹ when it unilaterally changed the policy for

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

evaluating classified supervisors.

The Board has reviewed the entire record in this case, including the unfair practice charge, the warning and dismissal letters and APSSE's 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.

The unfair practice charge in Case No. LA-CE-3512 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Dyer joined in this Decision.

applicant for employment or reemployment.

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

PUBLIC EMPLOYMENT RELATIONS BOARD



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



March 15, 1996

Wanda Robinson, Regional Representative
Association of Public School
Supervisory Employees, APSSE
Post Office Box 151022
Los Angeles, California 90015

Re.: Unfair Practice Charge No. LA-CE-3512, Association of Public
School Supervisory Employees, APSSE v. Los Angeles Unified
School District
DISMISSAL AND REFUSAL TO ISSUE COMPLAINT

Dear Ms. Robinson:

The above-referenced charge alleges the Los Angeles Unified School District (LAUSD) violated Educational Employment Relations Act (EERA or Act) section 3543.5(a) and (b) by unilaterally changing the policy for evaluating classified supervisors.

I indicated to you, in my attached letter dated February 27, 1996, 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 March 8, 1996, the charge would be dismissed. You contacted me on March 8, 1996, and indicated that you would be mailing an amended charge that day.

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 February 27, 1996 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:

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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
Tammy L. Samsel
Regional Attorney

Attachment

PUBLIC EMPLOYMENT RELATIONS BOARD



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



February 27, 1996

Wanda Robinson, Regional Representative
Association of Public School
Supervisory Employees, APSSE
Post Office Box 151022
Los Angeles, California 90015

Re: Unfair Practice Charge No. LA-CE-3512, Association of Public School Supervisory Employees. APSSE v. Los Angeles Unified School District
WARNING LETTER

Dear Ms. Robinson:

The above-referenced charge alleges the Los Angeles Unified School District (LAUSD) violated Educational Employment Relations Act (EERA or Act) section 3543.5(a) and (b) by unilaterally changing the policy for evaluating classified supervisors. My investigation revealed the following information.

The Association of Public School Supervisory Employees (APSSE) filed this charge on January 11, 1995. On March 10, 1995, the parties placed the charge in abeyance. On October 24, 1995, after a pre-complaint meeting with Marc S. Hurwitz, the charge was taken out of abeyance.

In this charge, APSSE alleges the District unilaterally changed the policy for evaluating classified supervisors. APSSE contends it learned of this policy change in September of 1994, while presenting a grievance regarding the evaluation of classified supervisor, Shirley Knight. In sum, APSSE claims the following: first, APSSE filed a grievance on behalf of Knight because her evaluation was improper, and then during the Step II meeting regarding Knight's grievance, APSSE learned the District changed the evaluation policy for classified supervisors.

On or about July 11, 1994, APSSE filed a grievance alleging the performance evaluation of Shirley Knight was improper. The grievance alleged violations of personnel commission rule 702 section D-1, and D-2.¹ APSSE claims that during a Step II

¹These sections provide:

Review of the performance evaluation by the next higher level of administrative authority

meeting in September of 1994, it learned the District unilaterally changed policy for evaluating the classified supervisors.²

APSSE alleges the policy for evaluating classified supervisors is found in an employee handbook. A District guide, entitled "Performance Evaluation and Employee Productivity," includes various evaluation procedures, including a section on conducting an evaluation conference. Within that section the guide states:

Each supervisor should use the evaluation conference to: explain to the employee the nature of each factor checked and the comments written on the form, remembering that such written comments must accompany any individual evaluation rated below standard, and provide specific examples of below standard performance and necessary improvement.

The guide is also subtitled, "A Guide for the Evaluation of Employee Performance in the Classified Service." A letter from the Superintendent of Schools within the guide introduces the

may be made before or after an individual evaluation conference is held with each employee. Any comments recorded on the performance evaluation form by the reviewer shall be signed and shown to the supervisor who made the evaluation and to the employee.

Employees and evaluators are encouraged to arrive at a mutual understanding and acceptance of the evaluation during the conference. An employee who believes that the evaluation is improper may go to the evaluator's immediate supervisor to resolve differences. If a permanent employee has received one or more checks in the "below performance standards" column and remains dissatisfied after review by the evaluator's supervisor, the procedures provided in Rule 893 may be used.

²On December 15, 1994, Francis Nakano, the Assistant Superintendent, concluded during the Step III meeting that Personnel Commission Rule 702 had not been violated.

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guide as a "restatement of principles and practices" for supervisors to follow when evaluating subordinates.

The charge fails to present a prima facie violation of EERA § 3543.5 (a) and (b). The duty owed to a non-exclusive representative is to provide notice and a reasonable opportunity to discuss wages, fringe benefits, and other matters of fundamental concern to the employment relationship before the employer reaches a decision on such matters. (Los Angeles Unified School District (1983) PERB Decision No. 285.) To establish a violation of EERA 3543.5(a) and (b), the Association has the burden of demonstrating the District failed to give it notice and a reasonable opportunity to meet and consult. (Butte Community College District (1989) PERB Decision No. 743.)

The charge fails to provide facts establishing the District altered a past practice or policy. The charge does not establish the above-referenced performance evaluation guide applied to classified supervisors. If the guide is applicable, the charge also fails to demonstrate how the District failed to follow the above-referenced sections of the performance evaluation guide, when it evaluated Knight.

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 March 8, 1996. I shall dismiss your charge. If you have any questions, please call me at (213) 736-7508.

Sincerely,

Tammy L. Samsel
Regional Attorney