

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



TONY LYNN HICKS,

Charging Party,

v.

COMPTON UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. LA-CE-5047-E

PERB Decision No. 2016

April 1, 2009

Appearance: Tony Lynn Hicks, on his own behalf.

Before Rystrom, Chair; Neuwald and Wesley, Members.

DECISION

WESLEY, Member: This case is before the Public Employment Relations Board (Board) on appeal by Tony Lynn Hicks (Hicks) of a Board agent's dismissal (attached) of his unfair practice charge. The charge alleged that the Compton Unified School District violated the Educational Employment Relations Act (EERA)¹ by retaliating against Hicks when it revised his seniority status. The Board agent dismissed the charge as untimely filed.

The Board has reviewed the entire record in this matter, including the original and amended unfair practice charge, the Board agent's warning and dismissal letters, and Hicks' appeal. Based on this review, the Board finds the Board agent's warning and dismissal letters to be a correct statement of the law and well reasoned, and therefore adopts them as the decision of the Board itself.

¹ EERA is codified at Government Code section 3540 et seq.

ORDER

The unfair practice charge in Case No. LA-CE-5047-E is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Chair Rystrom and Member Neuwald joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
3530 Wilshire Blvd., Suite 1435
Los Angeles, CA 90010-2334
Telephone: (213) 736-3008
Fax: (213) 736-4901



September 13, 2007

Tony Lynn Hicks

Re: Tony Lynn Hicks v. Compton Unified School District
Unfair Practice Charge No. LA-CE-5047-E
DISMISSAL LETTER

Dear Mr. Hicks:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on February 15, 2007. Tony Lynn Hicks (Hicks) alleges that the Compton Unified School District (District) violated the Educational Employment Relations Act (EERA)¹ by reducing a seniority credit on an examination for the position of Parent Involvement Coordinator (PIC).

I informed you in my attached letter dated August 20, 2007, 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 August 27, 2007, the charge would be dismissed.

You contacted me on August 27, 2007 to state that you had received the warning letter on August 24, 2007 and needed an extension of time to respond. I granted your request, and you timely filed an amended charge on September 4, 2007. For the reasons that follow, the amended charge fails to correct the deficiencies stated in the August 20, 2007 warning letter.

You state in the amended charge that while it is true that the allegations in the instant charge are related to another unfair practice charge² currently on appeal to the Board, you made reference to that charge to demonstrate the history of the District's unfair labor practices against you. You also discuss PERB's role in investigating unfair labor practices, the intention of the legislature in creating PERB in order to protect the rights of employees and employers under EERA, and the remedial powers of the Board. You allege that the current charge is differentiated from LA-CE-4900-E, because in the previous charge you had not yet applied for

¹ EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

² Unfair Practice Charge No. LA-CE-4900-E.

a promotional position, and consequently had not been denied your seniority status as of your date of hire in the District in 1997.

The crux of the instant charge rests upon the District's adjusted assignment of seniority rank for the position of Parent Involvement Coordinator (PIC) to 2003. As stated in the August 20, 2007 warning letter, the issue of adjusted seniority rank has been known to you since 2003, more than two years prior to the filing of Charge No. LA-CE-4900-E. That is the reason that allegations related to the issue of adjusted seniority rank were dismissed as untimely in the previous charge. When you applied for a promotional position in 2006, you were first issued examination results that reflected your seniority rank as that of your original hire date in 1997. You received corrected examination results in August 2006 that showed your seniority rank as if you had been hired in 2003. The District claimed that the earlier examination results were in error. This issue of adjusted seniority rank is currently on appeal to the Board under Charge No. LA-CE-4900-E. Although you had not yet applied for the promotional position when you filed the previous unfair practice charge in 2005, the underlying issue of adjusted seniority rank was addressed and dismissed in that charge. Accordingly, a final determination by the Board on that issue is forthcoming.

You raise the issue in the amended charge that PERB has never conducted a comprehensive investigation into the issue of a group of employees, including yourself, being labeled as exempt employees and therefore being excluded from union membership. You state that because of this action by the District, you and the other affected employees were unable to avail yourself of legal representation by the union and had to learn the law on your own, which is why the previous charge was filed beyond the time limits set forth in the statute of limitations. However, the Board has long held that the six-month period commences on the date that conduct constituting an unfair labor practice is discovered, rather than the date of discovery of the legal significance of that conduct. (Empire Union School District (2004) PERB Decision No. 1650.) Furthermore, these issues were thoroughly addressed by PERB in the dismissal of Charge No. LA-CE-4900-E. Therefore, the instant charge fails to state a prima facie case and must be dismissed.

Right to Appeal

Pursuant to PERB Regulations,³ 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. (Regulation 32635(a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received during a regular PERB business day. (Regulations 32135(a) and 32130; see also Government Code section 11020(a).) A document is also considered "filed" when received by facsimile transmission before the close of business

³ PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

together with a Facsimile Transmission Cover Sheet which meets the requirements of Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Regulations 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(916) 322-8231
FAX: (916) 327-7960

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. (Regulation 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 Regulation 32140 for the required contents.) The document will be considered properly "served" when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also be concurrently served via facsimile transmission on all parties to the proceeding. (Regulation 32135(c).)

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. (Regulation 32132.)

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

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September 13, 2007
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Sincerely,

TAMI R. BOGERT
General Counsel

By _____
Valerie Racho
Regional Attorney

Attachment

cc: Dr. Jesse Gonzales, Superintendent

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
3530 Wilshire Blvd., Suite 1435
Los Angeles, CA 90010-2334
Telephone: (213) 736-3008
Fax: (213) 736-4901



August 20, 2007

Tony Lynn Hicks

Re: Tony Lynn Hicks v. Compton Unified School District
Unfair Practice Charge No. LA-CE-5047-E
WARNING LETTER

Dear Mr. Hicks:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on February 15, 2007. Tony Lynn Hicks (Hicks) alleges that the Compton Unified School District (District) violated the Educational Employment Relations Act (EERA)¹ by reducing a seniority credit on an examination for the position of Parent Involvement Coordinator (PIC).

Most of the allegations in the above-referenced charge are identical to those dismissed in PERB Case Number LA-CE-4900-E, currently on appeal to the Board.² Although the instant charge alleges that on August 23, 2006,³ Hicks received a "Corrected Copy" of examination results which changed his seniority rank from his date of hire in 1997 to a date in 2003, the issue of seniority rank was previously addressed in LA-CE-4900-E. A warning letter dated November 7, 2005 said the following:

The District uses a seniority system that determines employment conditions such as salary, benefits, and paid time off; the longer an individual is employed continuously by the District, the more benefits he or she is entitled to. After the PIS employees were rehired into the CRS class, the District assigned them a seniority date based on their hire date as provisional employees, late 2003. The seniority of former CRA employees was calculated from the date they were originally hired into the CRA class.

¹ EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

² Appeal filed on January 17, 2006. A request for injunctive relief was filed concurrently with the unfair practice charge on October 21, 2005. The injunctive relief request was denied by the Board on November 1, 2005.

³ LA-CE-4900-E was dismissed on December 27, 2005.

The November 7, 2005 warning letter further stated that any allegation regarding the adjusted seniority rank was untimely because it had been known to the Charging Party since 2003, more than two years before that charge was filed. EERA section 3541.5(a)(1) prohibits PERB from issuing a complaint with respect to "any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (Gavilan Joint Community College District (1996) PERB Decision No. 1177.) It was found that no exception to the statute of limitations applied to the circumstances of the charge. The allegation regarding adjusted seniority rank was ultimately dismissed, along with the remaining allegations in the charge. Therefore, the issue of adjusted seniority rank has been known to Hicks since at least 2003. The corrected copy of examination results received in August 2006 with the adjusted seniority rank was consistent with the District's prior actions regarding that issue, and therefore, any allegation of wrongdoing connected to that conduct is untimely.

Additionally, the instant charge makes reference to Case Number LA-CE-4900-E and summarizes the allegations in that charge. Then, under the heading "Violation(s)" the instant charge quotes the language of Government Code Section 3543.5(a). However, the instant charge presents no new evidence of employer discrimination beyond the previously dismissed allegations in LA-CE-4900-E.

The only new allegation in the instant charge is that the District made a mistake during the administration of the PIC examination under a personnel commission rule. However, PERB's jurisdiction is limited to the determination of unfair labor practices arising under EERA and other public sector labor statutes. (California School Employees Association, Chapter 245 (Waymire) (2001) PERB Decision No. 1448.) To the extent that the charge alleges a violation of any statute or policy other than EERA, PERB is without authority to make a determination on such actions. (See Antelope Valley College Federation of Teachers (Stryker) (2004) PERB Decision No. 1624.)

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 that 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 have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before August 27, 2007, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3008.

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Sincerely,

Valerie Racho
Regional Attorney

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