

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



RONALD WILLARD WEIGHTMAN,

Charging Party,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. LA-CE-5208-E

PERB Decision No. 2073

October 28, 2009

Appearance: Linda Rose Fessler, Attorney, for Ronald Willard Weightman.

Before Dowdin Calvillo, Acting Chair; McKeag and Wesley, Members.

DECISION

DOWDIN CALVILLO, Acting Chair: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Ronald Willard Weightman (Weightman) of a Board agent's dismissal of his unfair practice charge. The charge alleged that the Los Angeles Unified School District (District) violated the Educational Employment Relations Act (EERA)¹ by: (1) failing to follow contractual timelines in processing a grievance; and (2) making false statements and withholding information at a grievance meeting. The Board agent dismissed the charge for lack of standing and failure to state a prima facie case of interference.

The Board has reviewed the dismissal and the record in light of Weightman's appeal and the relevant law. Based on this review, the Board affirms the dismissal of the charge for the reasons discussed below.

¹ EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references are to the Government Code.

BACKGROUND

Weightman is a computer teacher for the District and a member of the certificated bargaining unit exclusively represented by United Teachers of Los Angeles (UTLA). On June 19, 2007, UTLA filed a grievance claiming that for the past two years, the District had failed to properly pay Weightman in violation of Article XIV, section 30.0 (Payroll Errors) of the collective bargaining agreement (CBA) between UTLA and the District. A Step One grievance meeting was scheduled for August 22, 2007; it was subsequently rescheduled to September 24, 2007. Staff Relations Field Director Steve Quon (Quon) represented the District at the Step One meeting.²

When the District did not provide a Step One response within the timelines set forth in the CBA, UTLA requested that the grievance be moved to Step Two. A Step Two meeting was held on January 16, 2008. Quon and Director of Secondary School Services Dr. Evelyn Mahmud (Mahmud) represented the District at the Step Two meeting. The amended charge described the Step Two meeting as follows:

Mr. Quon immediately announced that Step One did not end according to contract (which I had no control over), affecting the views on a pre-Step-Two offer of \$62K made by the principal. Dr. Mahmud misrepresented the financial facts. She implied that I had agreed to teach additional assignments for free. She was supposed to have helped the principal discover a method for paying me, but instead withheld district methods for payment. Dr. Mahmud did not bargain in good faith. She misclassified my case as one of class size problems, instead of a matter of class coverage as I had originally presented it to Mr. Quon. She completely misconstrued when a fifteen-day time period should have begun as outlined in the UTLA agreement (which was

² It is unclear whether a UTLA representative attended the Step One meeting. Weightman's statement of the charge does not allege that a UTLA representative was present but the documents submitted in support of the charge include a letter from UTLA Area Representative Christopher Arellano (Arellano) stating that he would be Weightman's advocate at the Step One meeting.

operative even though I was speaking for myself alone in this matter).

Mahmud provided the District's written Step Two response to UTLA representative Arellano on January 31, 2008. In the letter, Mahmud asserted that Weightman's grievance did not concern a payroll error but rather a change in class size. Under Article V, Section 8.0 of the CBA, a grievance over class size must be filed within 15 days of the alleged violation. Because Weightman filed his grievance two years after the District allegedly failed to pay him for an increase in class size, Mahmud denied the grievance as untimely.

Weightman then asked UTLA to take his grievance to arbitration. On May 6, 2008, UTLA declined to do so. Weightman appealed the decision to UTLA's Grievance Review Committee, which informed him on June 12, 2008, that it had decided not to arbitrate his grievance.

Unfair Practice Charge, Dismissal and Appeal

Weightman filed the instant unfair practice charge on June 23, 2008. The charge alleged that the District violated EERA section 3543.2, subdivision (a) by not processing Weightman's grievance in a timely manner. It further alleged that the District's false statements during the Step Two grievance meeting violated EERA section 3543.5, subdivision (c). The Board agent sent Weightman a warning letter stating that, because the EERA sections cited in the charge deal solely with the rights of employee organizations, Weightman had no standing to allege violations of those sections. The letter further stated that the charge failed to state a prima facie case of interference with Weightman's rights under EERA.

Weightman amended the charge on September 29, 2008. The amended charge alleged the same conduct by the District but asserted that the conduct violated EERA section 3543, subdivision (b), which grants an employee the right to "present grievances to his or her

employer, and have those grievances adjusted, without the intervention of the exclusive representative.” The Board agent rejected this argument because the grievance at issue was filed by UTLA, not by Weightman as an individual. The Board agent dismissed the charge on October 1, 2008.

On October 27, 2008, Weightman filed a timely appeal of the dismissal. On appeal, Weightman argues that he has standing to bring the charge because his grievance sought to vindicate his own rights, not those of UTLA. He further contends that it is inconsistent for PERB to consider him an individual for purposes of the unfair practice charge but not for purposes of his grievance.

DISCUSSION

Weightman’s charge alleged that the District failed to follow contractual grievance timelines and that Mahmud made misrepresentations and withheld information during the Step Two grievance meeting. Weightman asserts that, by engaging in this conduct, the District failed to participate in the grievance process in good faith.

Weightman’s assertion can be characterized as alleging that the District either breached the grievance provisions of the CBA or unilaterally changed terms and conditions of employment. PERB has no authority to remedy a breach of a CBA unless the breach also constitutes an unfair practice. (EERA § 3541.5, subd. (b); *Los Angeles Unified School District* (1993) PERB Decision No. 1013.) Thus, to the extent the charge alleged a contractual breach, PERB is without authority to provide a remedy. (*Regents of the University of California* (1990) PERB Decision No. 849-H.)

EERA section 3543.5, subdivision (c) makes it unlawful for a public school employer to “[r]efuse or fail to meet and negotiate in good faith with an exclusive representative.” A unilateral change in an established policy, such as that set forth in a CBA, may demonstrate a

violation of the statutory duty to negotiate in good faith. However, this duty is owed only between the employee organization and the employer. Because the employer's duty to bargain in good faith is owed to the employee organization and not to the individual employees the organization represents, PERB has long held that an individual employee lacks standing to allege a unilateral change violation. (*Oxnard School District (Gorcey and Tripp)* (1988) PERB Decision No. 667.) In *Bay Area Air Quality Management District* (2006) PERB Decision No. 1807-M, the Board held that an individual employee lacked standing to allege that his employer's failure to comply with contractual grievance procedures constituted an unlawful unilateral change. Consequently, Weightman lacks standing to allege that the District violated EERA by failing to follow the grievance procedures in the CBA.

Nonetheless, Weightman does have standing to allege that the District's conduct during the grievance process interfered with his exercise of rights granted by EERA. (*Bay Area Air Quality Management District, supra.*) The test for whether a respondent has interfered with the rights of employees under the EERA does not require that unlawful motive be established, only that at least slight harm to employee rights results from the conduct. In *State of California (Department of Developmental Services)* (1983) PERB Decision No. 344-S, citing *Carlsbad Unified School District* (1979) PERB Decision No. 89 and *Service Employees International Union, Local 99 (Kimmitt)* (1979) PERB Decision No. 106, the Board described the standard as follows:

[I]n order to establish a prima facie case of unlawful interference, the charging party must establish that the respondent's conduct tends to or does result in some harm to employee rights granted under EERA.

Under the above-described test, a violation may only be found if EERA provides the claimed rights. Weightman alleged that the District's conduct interfered with his ability to receive a reasonable settlement offer from the District and to have UTLA take his grievance to

arbitration. No provision of EERA grants an employee the right to receive a reasonable settlement offer from his or her employer. The filing and pursuit of a grievance is protected by EERA. (*Ventura County Community College District* (1999) PERB Decision No. 1323; *North Sacramento School District* (1982) PERB Decision No. 264.) However, EERA does not give an employee the right to have a grievance taken to arbitration. (*Hart District Teachers Association (Mercado and Bloch)* (2001) PERB Decision No. 1456; *Castro Valley Unified School District* (1980) PERB Decision No. 149.)³ Accordingly, the charge did not state a prima facie case of interference with “employee rights granted under EERA.”

ORDER

The unfair practice charge in Case No. LA-CE-5208-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members McKeag and Wesley joined in this Decision.

³ Where such a right exists, it is bestowed by the terms of a CBA. (*California School Employees Association & its Chapter 379 (Dunn)* (2009) PERB Decision No. 2028.)