

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



JULES KIMMETT,)	
)	
Charging Party,)	Case No. LA-CE-1894
)	
v.)	PERB Decision No. 419
)	
LOS ANGELES COMMUNITY COLLEGE)	October 18, 1984
DISTRICT,)	
)	
Respondent.)	

Appearances: Jules Kimmett, representing himself;
Mary L. Dowell, Attorney for Los Angeles Community College
District.

Before Jaeger, Morgenstern and Burt, Members.

DECISION AND ORDER

JAEGER, Member: Jules Kimmett appeals the attached dismissal of his unfair practice charge against the Los Angeles Community College District. Based on the record, the Public Employment Relations Board summarily AFFIRMS the General Counsel's dismissal of the charge.

Members Morgenstern and Burt joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
3470 Wilshire Blvd., Suite 1001
Los Angeles, California 90010
(213)736-3127



January 23, 1984

Jules Kimmett

Mary L. Dowell
Los Angeles Community
College District
617 West Seventh Street
Los Angeles, CA 90017

RE: Kimmett v. Los Angeles CCD, LA-CE-1894,
DISMISSAL OF UNFAIR PRACTICE CHARGE

Dear Mr. Kimmett:

The above charge, filed December 13, 1983, alleges the following:

- "1. SECRET STEALTHY ACTION OF THE BOARD AND STAFF, PARTICULARLY CHANCELLOR KOLTAI, VICE CHANCELLOR SPAETER AND DIRECTOR DAN MEANS OF STAFF RELATIONS.
2. ALL SEVEN BOARD MEMBERS ACTING SUB ROSA WITH THE ABOVE MENTIONED STAFF TO FURLOUGH CLASSIFIED EMPLOYEES, NAMELY AS OF JUNE 29, 1983.
3. COMPOUNDING AND AGGRAVATING THIS UNFAIR LABOR PRACTICE IS THE SAME DEVIOUS AND DUBIOUS ACTION TAKEN NOVEMBER 30, 1983 POSTPONING TO FEBRUARY 4, 1983 THE LAYOFF SCHEDULE FOR JANUARY 8, 1984."

Upon review, the Los Angeles Regional Attorney wrote a letter to the Charging Party, advising him that specified deficiencies in the charge would require a dismissal unless corrected by amendment. That letter, incorporated herein as though fully set forth, was dated December 16, 1983, and gave the Charging Party until December 23, 1983 to amend the charge to allege facts to establish a prima facie case.

Pursuant to Charging Party's request of December 20, 1983, he was given an extension of time in which to file the requested amendment to December 27, 1983. The extension was confirmed by letter dated December 20, 1983, which is incorporated herein as though fully set forth.

On December 29, 1983, the Charging Party filed what purports to be an amendment to the charge. It states the following:

"1. Negotiations between Local 99 and District began July 25, 1983, and temporarily ended December 6, 1983 which involved 24 sessions.

2. Local 99 has received (a) copies of Resolution Reduction of Classified Service dated November 10, 1983 of the October 19, 1983 Board of Trustees Agenda Regarding Layoffs (b) Copies of Bumping Rights Elated November 10, 1983.

3. Copies of Seniority Lists of the Classified Employees of the District - without the names - only employee numbers.

4. Copies of Workforce Reduction dated November 16, 1983.

5. We are demanding minutes and tapes of all Board meetings involving the 4 items noted."

The "amendment" is fraught with the same deficiencies as the original charge, and Charging Party has failed to cure the deficiencies pointed out by the Regional Attorney's December 13, 1983 letter. There is no indication as to what "stealthy action" is being charged as an unfair practice, nor how such action is legally violative of the EERA. No impact upon the terms and conditions of employment has been alleged in connection with such "stealthy action".

There is no indication of a date when the District either decided to furlough or layoff employees, or when it implemented its decision. There is no allegation of a refusal to bargain or a demand to negotiate having been made by the pertinent Union. In fact, there are no facts alleged in the entire charge to indicate that the district took any action unilaterally and/or without an opportunity to bargain.

When the Charged Party was approached during this investigation, it also was unable to understand the allegations against it.

The Charging Party cannot be claiming that the District's extension of an effective date of layoff from January to

February, 1984 is illegal, since the only information submitted is contrary. Charging Party's union representative, in fact, has stated that it was SEIU, Local 99 that spearheaded an effort to negotiate the extension, and that it was extended pursuant to that Union's request. Charged Party concurs with this representation, and with the fact that no unilateral action has been alleged or supported with facts.

The Charging Party cannot be complaining that the LACCD passed a resolution to lay employees off, since there is no requirement of prior negotiations on the decision itself. KERN CCD, PERB, Decision No. 337 (8/19/83). If the Charging Party is claiming that the issuance of layoff notices on November 10, 1983 were unlawful, the above case holds that such action, in the absence of a demand to negotiate the notice period, is not an unlawful unilateral action. Even if one were to assume that such an issuance was unlawful, the charge nowhere alleges that the issuance of any notices (layoff or furlough) was done without notice or opportunity to bargain with the employee organizations.

The available evidence provided by SEIU Local 99 Business Representative William Price and that provided by Respondent indicates the the employee organizations involved were given notice of the District's decision to layoff employees, and were requested by the District to, and did, negotiate over the effects of those layoffs- Nothing alleged in the charge contradicts this evidence or supports a conclusion that the District committed any unlawful unilateral act. Therefore, the charge fails to state a prima facie case, and is hereby dismissed.

Pursuant to Public Employment Relations Board regulation 32635 (California Administrative Code, title 8, part III), you may appeal the refusal to issue a complaint (dismissal) to the Board itself.

Right to Appeal

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 Notice (section 32635(a)). To be timely filed, the original and five (5) copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) on February 13, 1984, or sent by telegraph or certified United States mail postmarked not later than February 13, 1984 (section 32135). The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

If you file a timely appeal of the refusal, any other party may file with the executive assistant to the Board an original and five (5) copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal (section 32635(b)).

Service

All documents authorized to be filed herein except for amendments to the charge must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany the document filed with the Regional Office or the Board itself (see section 32140 for the required contents and a sample form). The documents 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 executive assistant to the Board at the previously noted address. A request for an extension in which to file a document with the Regional Office should be addressed to the Regional Attorney. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the subject document. The request must indicate good cause for the position of each other party regarding the extension and shall be accompanied by proof of service of the request upon each party (section 32132).

Final Date

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

Very truly yours,

DENNIS SULLIVAN
General Counsel

Manuel M. Melgoza
Regional Attorney

MMM:djm

PUBLIC EMPLOYMENT RELATIONS-BOARD
Los Angeles Regional Office
3470 Wilshire Blvd., Suite 1001
Los Angeles, California 90010
(213)736-3127



December 20, 1983

Jules Kimmett

RE: Kimmett v. Los Angeles CCD, LA-CE-1894

Dear Mr. Kimmett:

This is to confirm our telephone conversation of December 20, 1983, where I agreed to give you an extension to amend your charge, as stated in my December 16, 1983 letter, to Tuesday, December 27, 1983. The amended charge must be received by me on or before December 27, 1983 instead of December 23, 1983.

Sincerely,

Manuel M. Melgoza
Regional Attorney

MMM:djm

PUBLIC EMPLOYMENT RELATIONS BOARD
Los Angeles Regional Office
3470 Wilshire Blvd., Suite 1001
Los Angeles, California 90010
(213)736-3127



December 16, 1983

Jules Kimmett

RE: Kimmett v. Los Angeles CCD, LA-CE-1894

Dear Mr. Kimmett:

The above charge, filed December 13, 1983, does not allege sufficient facts to establish a prima facie violation of the Educational Employment Relations Act. The charge, in its totality states:

"1. SECRET STEALTHY ACTION OF THE BOARD AND STAFF, PARTICULARLY CHANCELLOR KOLTAI, VICE CHANCELLOR SPAETER AND DIRECTOR DAN MEANS OF STAFF RELATIONS.

2. ALL SEVEN BOARD MEMBERS ACTING SOB ROSA WITH THE ABOVE MENTIONED STAFF TO FURLOUGH CLASSIFIED EMPLOYEES, NAMELY AS OF JUNE 29, 1983.

3. COMPOUNDING AND AGGRAVATING THIS UNFAIR LABOR PRACTICE IS THE SAME DEVIOS AND DUBIOUS ACTION TAKEN NOVEMBER 30, 1983 POSTPONING TO FEBRUARY 4, 1983 THE LAYOFF SCHEDULE FOR JANUARY 8, 1984."

Taking the allegations one at a time, there is no indication of what "stealthy action" is being alleged, nor how this action is violative of the EERA. There is no date indicating when the action occurred, nor what impact the action had on the terms and conditions of bargaining unit employees.

As to the second paragraph alleged, there is no indication of a date when the Board members took any action to "furlough" classified employees. Keep in mind that the decision of the District to reduce staff or lay-off employees is not a subject for negotiations, but is plainly a management prerogative. Kern CCD, PERB Decision No. 337 (1983) and Healdsburg, 33 Cal, 3d 350 (1983). The effects of the decision are negotiable, however. It is unclear from the charge what exactly is being alleged. Perhaps you can include a copy of the Board's minutes or resolution reflecting what you are claiming is a violation.

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Regarding the third allegation, there is no indication who took the action to postpone a layoff schedule, whether it was done unilaterally by the District, whether it was done pursuant to negotiations with the different unions involved, or whether it was done without notice to the Unions or without the opportunity to bargain about extending the layoff schedule.

Without these specific facts, the charge does not establish a prima facie case and does not sufficiently put the Charged Party on notice of what it is being charged with. Therefore, I will require that you amend your charge on or before December 23, 1983, to correct the deficiencies noted above. If the amended charge is not received by that date, I will be forced to dismiss it. I welcome a prompt reply and stand ready to assist you with any questions you may have regarding the above.

Sincerely,

Manuel M. Melgoza
Regional Attorney

MMM:djm

cc: William Price, SEIU, Local 99