

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



VICTOR WIGHTMAN,)
)
 Charging Party,) Case No. LA-CE-1766
)
 v.) PERB Decision No. 425
)
 LOS ANGELES UNIFIED SCHOOL) October 26, 1984
 DISTRICT,)
)
 Respondent.)
)
 _____)

Appearances: Victor Wightman and Jules Kimmett for Charging Party; O'Melveny & Myers by Joel Grossman for Respondent.

Before Hesse, Chairperson; Tovar and Morgenstern, Members.

DECISION AND ORDER

HESSE, Chairperson: Charging Party has set forth in his charge allegations against four "'Gentlemen' of the Los Angeles Unified School District." We find these assertions of wrongdoing under the Educational Employment Relations Act (EERA)¹ to be uniformly without merit. On appeal, Charging Party advances no legal arguments that persuade us that the regional attorney was incorrect in his judgment. We therefore summarily affirm the regional attorney's determination and adopt the attached letter of dismissal as the decision of the Board itself.

Members Tovar and Morgenstern joined in this Decision.

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

PUBLIC EMPLOYMENT RELATIONS BOARD

Headquarters Office
1031 18th Street
Sacramento, California 95814
(916) 322-3088



June 29, 1983

Joel M. Grossman, Atty.
O'Melveny & Myers
1800 Century Park East, Suite 600
Los Angeles, CA 90067

Jules Kimmett

RE: REFUSAL TO ISSUE COMPLAINT AND DISMISSAL OF UNFAIR
PRACTICE CHARGE; Victor Wightman v. Los Angeles USD
Charge No. LA-CE-1766

Dear Parties:

Pursuant to Public Employment Relations Board (PERB) regulation section 32730, a complaint will not be issued in the above-referenced case and the pending charge is hereby dismissed because it fails to allege facts sufficient to state a prima facie violation of the Educational Employment Relations Act (EERA).¹ The reasoning which underlies this decision follows.

On April 25, 1983, Mr. Wightman filed an unfair practice charge against the Los Angeles Unified School District (LAUSD) which alleged violations of sections 3543.5(a), (b), (c), and (d). In addition, he alleged violations of "Federal Conspiracy Law - Code 241 and 242."

His charge states:

"Gentlemen" of the Los Angeles Unified School District:

1. Mr. Srott: writes his own name (?)
illegibly through

¹References to the EERA are to Government Code section 3540 et seq. PERB regulations are codified at California Administrative Code, Title 8.

Joel Grossman
Jules Kimmett
June 29, 1983
Page 2

interference and concoction by letter (copy enclosed), Feb. 1, 1983 delivered to me by Mr. Simpson at the bus oiling spot.

2. Mr. Prior: better keep his nose out of my affairs from attempts at fraudulent (sic) letter delivery (to me) Feb. 1 & March 8, 1983 at the B.D.*

3. Mr. Simpson: has been incompetently impersonating mailman Feb. 1, 1983 at the B.D. by not wearing a uniform, not delivering to my house, and not procuring my signature for receipt (sic) of District junk mail.

4. Mr. Wessel(?): has been guilty of the same phoney enterprises mentioned above - i.e. his ineffective (sic) portrayal as "LAUSD postman", March 8, 1983 underneath the (B.D.) freeway.

*The B.D. or Business Division is located at
1425 S. San Pedro

As explained below, such actions, without more, do not violate any statute administered by the Public Employment Relations Board.

This agency does not have jurisdiction to correct all unfairness directed towards school employees. Instead, it is limited to enforcement of certain provisions of the EERA.

Joel Grossman
Jules Kimmett
June 29, 1983
Page 3

Specifically, section 3543 grants public school employees the right to:

form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations.

Section 3543.5 states:

It shall be unlawful for a public school employer to:

(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.

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

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

(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.

(e) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

The PERB has ruled that in order for an unfair practice charge to be correctly stated, it must allege facts that establish a "nexus", or connection, between an exercise of protected rights and the employer's action. (Carlsbad Unified School District (1/30/79) PERB Decision No. 89; Novato Unified School District (4/30/82) PERB Decision No. 210.)

Joel Grossman
Jules Kimmett
June 29, 1983
Page 4

There is simply no nexus between writing a name illegibly, fraudulent letter delivery, impersonating a mailman, and ineffective portrayal as "LAUSD Postman" and rights guaranteed by the EERA. Nor have facts been presented to demonstrate that the complained of conduct constitutes adverse employer action.

Pursuant to Public Employment Relations Board regulation section 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 dismissal (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 July 20, 1983, or sent by telegraph or certified United States mail postmarked not later than July 20, 1983 (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 to issue a complaint, any other party may file with 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 must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany the document filed with the Board itself (see section 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.

Joel Grossman
Jules Kimmett
June 29, 1983
Page 5

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 (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 M~~Dennis M. SULLIVAN
General Counsel

By

Robert ~~Kingsley~~
Attorney

cc: Victor Wightman