

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



TONY PETRICH.)
)
 Charging Party.) Case No. LA-CE-2134
)
 v.) PERB Decision No. 523
)
 RIVERSIDE UNIFIED SCHOOL DISTRICT.) September 25, 1985
)
 Respondent.)
)
 _____)

Appearance: Tony Petrich, on his own behalf.

Before Hesse. Chairperson; Jaeger. Morgenstern. Burt and Porter. Members.

DECISION AND ORDER

This case is before the Public Employment Relations Board (Board) on appeal by the Charging Party of the Board agent's partial dismissal, attached hereto, of certain portions of his charge alleging that the Riverside Unified School District violated section 3543.5(a) and (d) of the Educational Employment Relations Act (Government Code section 3540 et seq.).

We have reviewed the Board agent's partial dismissal and finding it free from prejudicial error, ADOPT it as the Decision of the Board itself.

By the BOARD

PUBLIC EMPLOYMENT RELATIONS BOARD

LOS ANGELES REGIONAL OFFICE

3470 WILSHIRE BLVD., SUITE 1001

LOS ANGELES, CALIFORNIA 90010

(213) 736-3127



May 8, 1985

Tony Petrich

Re: LA-CE-2134, Tony Petrich v.
Riverside Unified School District
PARTIAL DISMISSAL OF UNFAIR PRACTICE CHARGE

Dear Mr. Petrich:

The above-referenced unfair practice charge filed on February 11, 1985 alleges that the Riverside Unified School District attempted to unilaterally change your work hours and threatened you with reprisals when you refused to allow the change and requested to meet and negotiate the change- This conduct is alleged to violate Government Code section 3543.5(a) and (d) of the EERA. Arguably, it might also violate section 3543.5(b) and (c).

A complaint based on the allegations related to the threatened reprisals is issuing simultaneously with this letter dismissing the remaining allegations. The complaint is attached hereto and incorporated by reference.

I indicated to you in my attached letter dated April 22, 1985 that certain allegations contained in the 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 accordingly. You were further advised that unless you amended these allegations to state a prima facie case, or withdrew them prior to April 29, 1985, they would be dismissed.

I have not received either a request for withdrawal or an amended charge and am therefore dismissing those allegations which fail to state a prima facie based on the facts and reasons contained in my April 22, 1985 letter.

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 May 28, 1985, or sent by telegraph or certified United States mail postmarked not later than May 28, 1985 (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 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 each copy of a document served upon a party or filed with 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 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 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).

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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

Barbara T. Stuart
Regional Attorney

cc: Charles Field, Esq.

Attachments

BTS:djm

PUBLIC EMPLOYMENT RELATIONS BOARD

LOS ANGELES REGIONAL OFFICE
3470 WILSHIRE BLVD., SUITE 1001
LOS ANGELES, CALIFORNIA 90010
(213) 736-3127



April 22, 1985

Tony Petrich

Re: LA-CE-2134, Tony Petrich v.
Riverside Unified School District

Dear Mr. Petrich:

The above-referenced unfair practice charge filed on February 11, 1985 alleges that the Riverside Unified School District attempted to unilaterally change your work hours and threatened you with reprisals when you refused to allow the change and requested to meet and negotiate the change. This conduct is alleged to violate Government Code section 3543.5(a) and (d) of the EERA. Arguably, it might also violate section 3543.5(b) and (c).

Facts

My investigation revealed the following facts. Tony Petrich is a gardener at the Woodcrest Elementary School. He is a member of the classified bargaining unit represented by California School Employees Association, Chapter #506 (CSEA). The bargaining unit is currently covered by a 1982-85 collective bargaining agreement. The contract states that regular full-time employment shall be eight hours per day and forty hours per week, but does not specify workday beginning and ending times. The contract does not provide for binding arbitration of grievances.

As background information, Mr. Petrich has had a history of personnel issues with the District since 1982. Mr. Petrich has filed grievances pursuant to the contractual grievance procedure. Reprimands have been placed in his personnel file on various occasions. In 1984 and 1985, subsequent to the occasion at issue in the instant case, Mr. Petrich filed a series of unfair practice charges against the District.

Against this background, on August 22, 1984 Mr. Petrich attended a meeting called by Dr. Sund. Also present at the meeting were David Magana, Head Custodian; Ernie Benzor,

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Assistant Director of Operations; and George Williams, Personnel Administrator. At the meeting Dr. Sund explained to Mr. Petrich that they were to review his work schedule and description of duties to be effective September 4, 1984. The District sought to change Mr. Petrich's working hours from 7 a.m.-4 p.m. to 6 a.m.-3 p.m. Dr. Sund asked Mr. Petrich to review these documents and bring to her attention any area of concern to him. Mr. Petrich replied that he would not respond in any way without representation. The meeting concluded fifteen minutes after it began.

A second meeting was scheduled and held the following day, on August 23, 1984. Present were Mr. Petrich and his representatives, Mr. Alan Aldrich, CSEA Field Representative and Joe Gandara, CSEA Grievance Chairperson. Also present were Dr. Sund, Mr. Magana, Mr. Benzor and Mr. Williams. Mr. Aldrich stated that the District did not have the right to change an employee's working hours once they had been initially established without meeting and negotiating with the exclusive representative.

An argument developed over the issue of negotiability. Mr. Williams said he would reduce Mr. Petrich's hours of employment unless he agreed to sign the revised work schedule as written, including the change in his hours of employment. He said words to the effect, "If you do not want to work 6 a.m. to 3 p.m., we'll just cut your hours." Dr. Sund stated that unless Mr. Petrich agreed to sign the revised work schedule, she would "get somebody else" to do the job. Mr. Petrich interpreted this statement to mean that she would fire him from his employment.

No agreement was reached in the discussion. The meeting concluded with Dr. Sund stating that she would confer with Mr. Williams and Mr. Tucker regarding further procedures in the matter.

On August 28, 1984, Mr. Aldrich wrote a letter to Mr. Tucker regarding his and Chapter President Gary Prince's concerns relative to the proposed change of hours impacting Mr. Petrich. He reiterated CSEA's position that hours of employment are a mandatory subject of bargaining under the EERA. He pointed out that the collective bargaining agreement was silent on the issue of changes of unit member hours and that he found nothing within the agreement that constituted a clear and unmistakable waiver of CSEA's right to negotiate the issue. The letter concluded with a request to negotiate regarding the proposed change of hours impacting Mr. Petrich.

On September 19, 1984, Mr. Tucker met with Mr. Petrich and his representatives Mr. Aldrich and Mr. Prince to negotiate the change in hours. The parties were unable to reach agreement. After the meeting, Mr. Tucker wrote a letter to Ms. Frances A. Kreiling, Regional Director of the Los Angeles Office of the PERB, stating that the District agreed that the changing of hours was a bargainable issue, but that an impasse existed between the parties because they were unable to reach agreement. He requested the appointment of a mediator.

Mr. Tucker was notified by PERB by letter dated October 10, 1984, that a mediator had been appointed in case LA-M-1350, Riverside Unified School District. The mediation did result in an agreement to change Mr. Petrich's hours effective February 1, 1985 to those desired by the District in exchange for an extra day of vacation each year for Mr. Petrich.

Threats of Reprisal

The charge states a prima facie violation of section 3543.5(a) based upon, the statements by Dr. Sund and Mr. Williams quoted above. These statements arguably threatened reprisals against Mr. Petrich because of his exercise of employee rights in seeking to have the exclusive representative represent him regarding the change in his work hours. The statements alone may not be sufficient to constitute a threat, but in the context of the history of personnel issues between Mr. Petrich and the District, the Charging Party may be able to show a violation of section 3543.5(a). Wightman v. Los Angeles Unified School District (12/31/84) PERB Decision No. 473.

Unilateral Change in Hours

The charge could be argued to allege a violation of section 3543.5(c) by virtue of the District's attempt to unilaterally impose a change of work hours on Mr. Petrich. In addressing this issue, it is not necessary to resolve the issue of whether the change of work hours of one employee is negotiable. In Grant Joint Union High School District (2/26/82) PERB Decision No. 196, the Board indicated that to constitute an unlawful unilateral change, the employer's conduct must constitute a "change of policy" which has a "generalized effect or continuing impact upon the terms and conditions of employment of bargaining unit members."

Nevertheless, leaving open the question of negotiability, here the charge still does not allege a prima facie violation of the

EERA because no change was actually made until after negotiations were "held and agreement was reached. The District's initial position was that the issue of hours was not negotiable because of the management rights clause present in the negotiated contract. Mr. Petrich's representatives were able to convince the District to negotiate.

A violation of section 3543.5(c) will be found where (1) the employer has implemented a change in policy in a matter within the scope of representation, and (2) the change is implemented prior to the employer notifying the exclusive representative and giving it an opportunity to request negotiations. V7alnut Valley Unified School District (3/30/81) PERB Decision No. 160; Grant Joint Union High School District, supra; State of California (Dept. of Transportation) (11/28/83) PERB Decision No. 361-S. In the instant case, there was no change implemented by the District until after negotiations with the exclusive representative. Thus, a critical element of a prima facie case is missing, and no complaint can issue on this allegation.

Since no (c) violation is stated by the charge, there can be no derivative (b) violation regarding the alleged unilateral change of hours. (San Francisco Community College District (10/12/79) PERB Decision No. 105.)

Alleged 3543.5(d) Violation

The charge states that the District by its conduct described above has violated section 3543.5(d). This section provides that:

It shall be unlawful for a public school employer to

(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.

However, none of the allegations in the charge support a violation of this section by the District. Thus, this alleged violation should be dismissed.

Opportunity to Amend

For the reasons stated above, the charge as presently written does not state a prima facie violation of the EERA. If you

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feel that there are facts or legal arguments which would require different conclusion, an amended charge should be prepared on a standard PERB unfair practice charge form clearly labeled First Amended Charge, should contain all the allegations you wish to make and be signed under penalty of perjury. 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 by April 29, 1985, I shall dismiss your charge. If you have any questions on how to proceed, please call me at (213) 736-3127.

Sincerely,

Barbara T. Stuart
Regional Attorney

BTS:djm

STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

TONY PETRICH,)
)
 Charging Party,) Case No. LA-CE-2134
)
 v.) COMPLAINT (Unfair - EERA)
)
 RIVERSIDE UNIFIED SCHOOL)
 DISTRICT,)
)
 Respondent.)
)

It having been charged by the Charging Party that the Respondent has engaged in certain unfair practices in violation of California Government Code section 3543.5; the General Counsel of the Public Employment Relations Board (PERB) on behalf of the PERB, pursuant to California Government Code sections 3541.3(h) and (i) and California Administrative Code, title 8, part III, sections 32620(b)(6) and 32640, issues this COMPLAINT and alleges:

1. The Respondent is a public school employer within the meaning of Government Code section 3240.1(k).
2. The Charging Party is an employee within the meaning of Government Code section 3540.1(j).
3. The charge was filed with the PERB on February 11, 1985, and served on Respondent on February 11, 1985.

4. Tony Petri, at all relevant times, was employed as a gardener at Woodcrest Elementary School by Respondent, and was a member of a bargaining unit of classified employees covered by a collective bargaining agreement between the California School Employees Association, Chapter #506 (CSEA) and the Riverside Unified School District.

5. Mr. Petrich has had a history of personnel issues with the District since 1982. Reprimands have been placed in his personnel file on various occasions. Mr. Petrich has filed grievances pursuant to the contractual grievance procedure.

6. On or about August 23, 1984, Charging Party and his CSEA representatives attended a meeting with representatives of Respondent to discuss a proposed change of Charging Party's work hours.

7. During said meeting, Respondent's representative. Assistant Director of Operations Benzor, stated to Charging Party words to the effect, "If you do not want to work 6 a.m. to 3 p.m., we'll just cut your hours."

8. During said meeting, Respondent's representative. Principal Mary Ann Sund, stated to Charging Party words to the effect that unless Mr. Petrich agreed to sign the revised work schedule, she would "get somebody else" to do the job.

9. The actions described above in paragraphs 7 and 8 constituted an unlawful threat of reprisal against Mr. Petrich when viewed in their overall context in violation of Government Code section 3543.5(a).

10. The remaining allegations made in the charge are being dismissed by letter to issue simultaneously with this complaint. Said letter is attached hereto and incorporated by reference.

DATED: May 8, 1985

DENNIS M. SULLIVAN
General Counsel

BY

Barbara T. Stuart
Regional Attorney