STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

| | | |
|---|---|---|
| TONY PETRICH, | ) | |
| Charging Party, | ) | Case No. LA-CO-347 |
| v. | ) | PERB Decision No. 577 |
| CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, | ) | June 25, 1986 |
| Respondent. | ) | |

Appearance: Tony Petrich, on his own behalf.

Before Hesse, Chairperson; Morgenstern, Burt, Porter and Craib, Members.

## DECISION

This case is before the Public Employment Relations Board (Board) on appeal by Charging Party of the Board agent's dismissal, attached hereto, of his charge alleging that the California School Employees Association violated sections 3543.6(a) and (b) of the Educational Employment Relations Act (Gov. Code sec. 3540 et seq).

We have reviewed the dismissal and, finding it free from prejudicial error, adopt it as the decision of the Board itself, in that, as indicated in the Board agent's letter, the charge failed to state a prima facie case.

## ORDER

The unfair practice charge in Case No. LA-CO-347 is DISMISSED WITHOUT LEAVE TO AMEND.

By the BOARD.

STATE OF CALIFORNIA GEORGE DEUKMEJIAN, *Governor*

**PUBLIC EMPLOYMENT RELATIONS BOARD**
HEADQUARTERS OFFICE
1031 18TH STREET
SACRAMENTO, CALIFORNIA 95814
(916) 322-3088

March 28. 1986

Mr. Tony Petrich

Re: Petrich v. California School Employees Association.
Case No. LA-CO-347

Dear Mr. Petrich:

You have filed a charge against the California School Employees Association (CSEA) alleging that the Respondent has violated the Educational Employment Relations Act (EERA) by causing your employer, the Riverside Unified School District, to distribute to the employees a leaflet from CSEA endorsing a candidate for the State Public Employees Retirement System.

In a letter dated March 19. 1986. a copy of which is attached hereto as Exhibit No. 1. I advised you that, as presented, the charge did not present a prima facie case of an EERA violation and that unless you withdrew or amended the charge. I would dismiss it. I have not received an amendment or a withdrawal, and for the reasons set forth in my letter of March 19. 1986. I am therefore dismissing the charge.

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 April 17. 1986. or sent by telegraph or certified United States mail postmarked not later than April 17. 1986 (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 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 document 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 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.

JEFFREY SLOAN
Acting General Counsel

By _____
Jorge Leon
Staff Attorney

4289d

STATE Of CALIFORNIA GEORGE DEUKMEJIAN. *Governor*

**PUBLIC EMPLOYMENT RELATIONS BOARD**
HEADQUARTERS OFFICE
1031 18TH STREET
SACRAMENTO, CALIFORNIA 95814
(916) 322-3088

March 19, 1986

Mr. Tony Petrich

Re: Petrich v. California School Employees Association.
Case No. LA-CO-347

Dear Mr. Petrich:

You have filed a charge against the California School Employees Association (CSEA) alleging that the Respondent has violated the Educational Employment Relations Act (EERA) by causing your employer, the Riverside Unified School District, to distribute to the employees a leaflet from CSEA endorsing a candidate for the State Public Employees Retirement System.

The charge alleges that on November 6. 1985. Mr. Phillip Hodnett. plant supervisor at North High School, handed you an official ballot for the December election of a member-at-large representative for the Public Employees Retirement System and at the same time handed you a memorandum dated November 5 from Evelyn Johnson endorsing candidate William Ellis for reelection. Ms. Johnson is described as an "agent of the California School Employees Association." She was CSEA's representative to the District Safety Committee during that time. The ballot came with an envelope into which the employee could insert the voted ballot and was to be mailed directly to PERS for tallying.

Mr. Hodnett. your supervisor did not say anything to you at that time concerning the ballot, the memorandum, or the election. While you do not possess information to the effect that the District staff distributed Johnson's memo to other employees, you assume that such is the case. You allege that CSEA's conduct (1) coerces the employees in their exercise of rights and (2) caused the District to violate 3543.5.

Analysis

Government Code section 3543.6 provides in relevant part:

> It shall be unlawful for an employee organization to:

EXHIBIT 1

> (a) Cause or attempt to cause a public school employer to violate Section 3543.5.
>
> (b) 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.

The coercive effect of the CSEA's conduct is not apparent. Mr. Hodnett, an agent of the District in his capacity as supervisor, handed you a ballot and a leaflet apparently authored by a representative of the local CSEA chapter. Many school employers, as part of their obligation to afford "access" by the labor organization to the employees, routinely distribute leaflets, memoranda, mail etc., directed by the organization to the employees.

The ballot, once filled out by the employee was to be returned directly to the Public Employees Retirement System — not to the employer. You do not allege that Mr. Hodnett said anything to you about your voting preference or about the leaflet from Johnson. The leaflet, while endorsing Williams, did not request any direct response from the voting employee. You do not allege that there was any mechanism by which either the District or the CSEA could learn what an employee's vote would have been.

Under these circumstances, the employee would be free to accept the ballot and read it or ignore it. The employee was free to accommodate Johnson's endorsement or to reject it. The employee could exercise his/her voting privilege or forego it. In short, the Johnson memo did not in any way appear to reasonably affect the employees' exercise of free choice in the election. For these reasons, the charge does not demonstrate a prima facie case of coerce conduct on the part of CSEA.

Regarding the allegation that CSEA's conduct caused or was an attempt to cause the employer to violate the EERA, there does not appear to be a prima facie case of such a violation stated. The election for member-at-large of the Public Employees Retirement System does not relate to any issue present in the typical employer-employee relationship. The conduct of the District in handing you (and perhaps other

employees) a copy of the Johnson memo does not appear to constitute coercion or interference against you by the District. As stated earlier the balloting process in this election is such that the employees' preferences for the candidates were not to be disclosed to the employer. And. you do not allege that when he handed you the ballot and the memo, Mr. Hodnett said anything to you about the matter. Thus, there does not appear to be any coercion, restraint, or interference on the part of the employer against you or any other employee.

For these reasons, charge number LA-CO-347. as presently written, does not state a prima facie case. If you feel that there are any factual inaccuracies in this letter or any additional facts which would correct the deficiencies explained above, please amend the charge accordingly. The amended charge should be prepared on a standard PERB unfair practice charge form clearly labeled First Amended Charge, contain <u>all</u> the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. 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 before March 27, 1986, I shall dismiss your charge. If you have any questions on how to proceed, please call me at (916) 323-8015.

Sincerely yours.

Jorge Leon
Staff Attorney

4223d