

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



GLADYS M. BRACEY,)
)
 Charging Party,) Case No. LA-CE-2307
)
 v.) PERB Decision No. 588
)
 LOS ANGELES UNIFIED SCHOOL DISTRICT,) September 25, 1986
 Respondent.)
 _____)

Appearance: Gladys M. Bracey, on her 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 the charging party of the Board agent's partial dismissal, attached hereto, of her charge alleging that the Los Angeles Unified School District violated section 3543.5 of the Educational Employment Relations Act (Gov. Code sec. 3540 et seq.).

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

ORDER

That portion of the unfair practice charge in case No. LA-CE-2307 alleging violations of the Education Code is hereby DISMISSED WITHOUT LEAVE TO AMEND.

By the BOARD

PUBLIC EMPLOYMENT RELATIONS BOARD

LOS ANGELES REGIONAL OFFICE
3470 WILSHIRE BLVD., SUITE 1001
LOS ANGELES, CALIFORNIA 90010
(213) 734-3127



May 1, 1986

Gladys M. Bracey

Ret LA-CE-2307, Gladys M. Bracey v. Los Angeles Unified
School District,
PARTIAL DISMISSAL OF UNFAIR PRACTICE CHARGE

Dear Ms. Bracey:

The above-referenced charge alleges that you have not been paid full disability pay under Education Code 44942 by the Los Angeles Unified School District. The first amendment to charge alleges that the District discriminated against you by claiming you are mentally incompetent in retaliation for protected activities, and that the District violated certain Education Code provisions. This conduct is alleged to violate Government Code section 3543.5 of the Educational Employment Relations Act (EERA).

I indicated to you in my attached letter dated April 18, 1986 that 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 25, 1986, they would be dismissed.

On April 24, 1986, we agreed to an extension of time until April 28, 1986 to allow you to consult an attorney. You filed a first amendment to the charge on April 28, 1986.

I am dismissing the charge because it fails to state a prima facie case based on the facts and reasons contained in my April 18, 1986 letter.

The first amendment to the charge alleges additional violations of the Education Code which this Board does not have .

jurisdiction to remedy as you were previously advised. For this reason these aspects of the first "amendment to the charge will be dismissed.

You may obtain a review of this dismissal of the charge and portions of the first amendment to charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal (California Administrative Code, title 8, part III, section 32635). 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 21, 1986, or sent by telegraph or certified United States mail postmarked not later than May 21, 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, 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,

Jeffrey Sloan
Acting General Counsel

Barbara T. Stuart
Regional Attorney

cc: Richard N. Fisher, Esq.
Richard J. Schwab, Esq.

Attachment

BTS:eb

PUBLIC EMPLOYMENT RELATIONS BOARD

LOS ANGELES REGIONAL OFFICE
3470 Wilshire Blvd., Suite' 1001
LOS ANGELES CALIFORNIA 90010
(213) 736-3127



April 18, 1986

Gladys m. Bracey

Re: LA-CE-2307, Gladys M. Bracey y.
Los Angeles Unified School District

Dear Ms. Bracey:

The above-referenced charge alleges that you have not been paid full disability pay under Education Code 44942 by the Los Angeles Unified School District. This conduct is alleged to violate Government Code section 3543.5 of the Educational Employment Relations Act (EERA).

My investigation of the charge revealed the following facts. On or about May 27, 1985, the police delivered to your husband at your home a letter dated May 20, 1985 which read as follows:

Dear Ms. Bracey:

As set forth in the letter to you dated May 13, 1985", the Board of Education has voted to suspend you from service until completion of the procedure set forth in Education Code section 44942.

This is to confirm that the aforementioned letter advised you of an examination that has been scheduled for you at 1:00 p.m. on Tuesday, May 23, 1985 at the medical offices located at 610 S. Euclid Avenue, Pasadena, California. 91106.

As you were informed in the letter of May 13, the Education Code provides that the examination is to be conducted by three (3) psychiatrists selected by you from the following list:

1. R. Sloan, M.D.
2. R. Burgoyne, M.D.
3. Barry Kramer, M.D.
4. Tim Bottelo, M.D.
5. Javad Razani, M.D.

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It is important that you contact me by
May 23, 1985 to indicate the doctors you
have selected. My telephone number is (213)
625-6245, and my mailing address is
450 North Grand Avenue, Los Angeles,
California 90012.

Very truly yours,

Robert Witter, Director
Employee Services Section
Personnel Division

You did not contact Mr. Witter or otherwise respond to the
letters Subsequently you received from the District three
checks which you describe as "half pay."

The District states that the checks were payment for 690 hours
of accrued sick leave.. The District placed you on unpaid
mandatory sick leave effective June 4, 1985 for a two year
period ending June 3, 1987.. This was done when you failed to
submit to the psychiatric evaluation provided for in Education
Code section 44942.¹

¹Education Code section 44942 provides in pertinent part:

Suspension of transfer of certificated employees on ground of
mental illness; Psychiatric examination; Mandatory sick
leave, (a) Any certificated employee may be suspended or
transferred to other duties by the governing board if the board
has reasonable cause to believe that the employee is suffering
from mental illness of such a degree as to render him
incompetent to perform his duties.

(b) The governing board shall forthwith, upon any suspension or
transfer hereunder, give to the employee a written statement of
the facts giving rise to the board's belief, and an opportunity
to appear before the board within 10 days to explain or refute
the charges.

(c) If, after the employee's appearance before the board, the
board decides to continue the suspension or transfer, or if the
employee chooses not to appear before the board, the employee
shall then be offered, in writing, the opportunity of being
examined, by a panel of three psychiatrists selected by him from
a list of psychiatrists to be provided by the board. To assist

Subsection 44942(c) provides that an employee shall continue to receive his regular salary and all other benefits of employment until the filing of the psychiatric panel's report with the District's governing board. However, subsection 44942(d)

the panel in making their determination, the governing board shall supply to the panel, prior to the date scheduled for the psychiatric examination, a list of the duties of the position from which the employee was suspended or transferred. The employee shall continue, to receive his regular salary and all other benefits of employment during the period, dating from his suspension to the filing of the report of the panel with the governing board.

(d) The psychiatric examination shall be conducted at school district expense within 15 days of any suspension or transfer ordered hereunder. The employee shall submit to the examination, but shall be entitled to be represented by a psychiatrist or physician of his own choice, and any report of the psychiatrist or physician selected by him shall be filed with the panel at the request of the employee.

A written report of the panel on the examination of the suspended or transferred employee shall be submitted to the governing board within 10 days after completion of the examination. A copy shall be supplied to the employee upon request. The report shall contain a finding on whether the employee is suffering from mental illness of such a degree as to render him incompetent to perform his duties.

(e) If a majority of the panel conclude that the employee should be permitted to return to his duties, no written record of the suspension or of the determination of the panel shall be retained, and in all respects any written record concerning the employee shall appear as it did before the suspension was made.

(f) If a majority of the panel find in their report that the employee is suffering front mental illness of such a degree as to render him incompetent to perform his duties, the governing board may, upon receipt of the report, place the employee on mandatory sick leave of absence. Any mandatory sick leave of absence imposed under this section shall not exceed two years, during which period the employee shall be entitled to sick leave, hospital and medical benefits which he accrued during his employment by the governing board but only to the extent of such accrual.

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provides that the employee shall submit to the examination. The District apparently placed you on, mandatory sick leave under subsection 44942(f) when you failed to respond to its May 20, 1935 letter.

The collective bargaining agreement between your exclusive representative, the United Teachers - Los Angeles and the District does not contain any provision pertinent to your situation or section 44942.

The Public Employment Relations Board does not have jurisdiction to remedy alleged noncompliance with the Education Code. Government Code section 3541.3, defining the powers and duties of the Board, authorizes the board in subsection (i):

To investigate unfair practice charges or alleged violations of this chapter, and take such action and stake such determinations in respect of such charges or alleged violations as the board deems necessary to effectuate the policies of this chapter.
[Emphasis added.]

See also section 3541.5 governing unfair practices; Los Angeles Council of School Nurses v. Los Angeles Unified School District (1980) 113 Cal.App.3d 777; and Fresno Unified School District v. National Education Association (1981) 125 Cal.App.3d 259.

Since the Board does not have jurisdiction to remedy alleged violations of the Education Code, the charge will be dismissed.

A copy of this letter will be sent to your attorney, Richard J. Schwab, Esq., who I understand is representing you regarding the Education Code section 44942 issue.

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 feel that there are facts or legal arguments which, would require a 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

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April 25, 1986, I shall dismiss your charge. If you have any questions regarding how to proceed, please call me at (213) 736-3127.

Sincerely, JEFFREY SLOAN

Acting General Counsel

Barbara T. Stuart
Regional Attorney

cc: Richard J. Schwab, Esq.

BTS:eb