

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



TONY PETRICH,)
)
 Charging Party,) Case No. LA-CO-339
)
 v.) PERB Decision No. 758
)
 CALIFORNIA SCHOOL EMPLOYEES)
 ASSOCIATION,) September 11, 1989
)
 Respondent.)
 _____)

Appearances: Tony Petrich, on his own behalf.

Before Porter, Craib and Camilli, Members.

DECISION

PORTER, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the charging party, Tony Petrich, to the proposed decision, attached hereto, of a PERB administrative law judge (ALJ). The ALJ dismissed the complaint because the charging party failed to appear at the formal hearing on the matter, and failed to show cause when the ALJ provided him with the opportunity to do so.

After reviewing the entire record, including the exceptions filed by the charging party, we find the ALJ's findings of fact and conclusions of law to be free of prejudicial error, and we adopt them as the decision of the Board itself.

ORDER

The complaint in Case No. LA-CO-339 is hereby DISMISSED.

Members Craib and Camilli joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



TONY PETRICH,)	
)	UNFAIR PRACTICE
Charging Party,)	Case No. LA-CO-339
)	
v.)	
)	
CALIFORNIA SCHOOL EMPLOYEES)	PROPOSED DECISION
ASSOCIATION,)	(7/17/87)
)	
Respondent.)	
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Appearances: Tony Petrich, on his own behalf; E. Luis Saenz, attorney for California School Employees Association.

Before James W. Tamm, Administrative Law Judge.

PROCEDURAL HISTORY AND FINDINGS OF FACTS

On August 27, 1985, Tony Petrich (hereafter Charging Party) filed this unfair practice charge against the California School Employees Association (hereafter CSEA). The charge alleged that CSEA had threatened Petrich in reprisal for engaging in protected conduct and that CSEA had failed to inform Petrich about a Level II conference concerning a grievance Petrich had filed.

On September 22, 1986, the reprisal allegation was dismissed and a complaint was issued on the second allegation.¹

¹ The reprisal allegation, which was dismissed, was appealed and is currently awaiting decision by the Public Employment Relations Board (hereafter Board).

This proposed decision has been appealed to the Board itself and may not be cited as precedent unless the decision and its rationale have been adopted by the Board.

An informal settlement conference was scheduled, however, the Charging Party failed to appear for the conference. Shortly thereafter, a CSEA motion to dismiss the complaint, based upon a failure of Charging Party to state a prima facie violation, was denied by the administrative law judge assigned to the settlement conference.²

A formal hearing was scheduled for May 12, 1987, in San Bernardino, California. On May 5, 1987, at CSEA's request and with Charging Party's concurrence, the hearing was rescheduled for May 8, 1987, to be held in Los Angeles.

The hearing commenced on May 8, 1987, and counsel for CSEA appeared before the undersigned fully prepared to litigate the matter. Charging Party failed to appear. Charging Party did not notify the administrative law judge that he would not appear nor did he seek a continuance of the hearing. Upon Charging Party's failure to appear, counsel for CSEA made a motion to dismiss the complaint because of Charging Party's failure to proceed with the hearing.

On May 12, 1987, Charging Party was ordered to show cause why this matter should not be dismissed due to Charging Party's failure to litigate the matter. Charging Party was also ordered to show cause why attorney's fees should not be awarded to Respondent due to Charging Party's failure to appear at the hearing.

²The motion to dismiss did not cite Charging Party's failure to appear at the settlement conference as grounds for dismissal.

On June 1, 1987, Charging Party replied to the Order to Show Cause, responding only to the issue of attorney's fees. Charging Party offered no response to the issue of his failure to appear at the hearing.

DISCUSSION

On two occasions, the Board has upheld dismissals of unfair practice complaints because charging parties have failed to proceed with litigation of the complaint. In Service Employees International Union, Local 99, AFL-CIO (Kimmett) (1981) PERB Decision No. 163, the complaint was dismissed when the charging party failed to appear at the hearing. In Los Angeles Unified School District (Siamis) (1984) PERB Decision No. 464, the complaint was dismissed when the charging party failed to appear for the sixth day of the formal hearing.

In the case at hand, the Charging Party was fully aware of the time, date, and location of the hearing because he had concurred in its scheduling only three days earlier. He did not notify the administrative law judge he would not appear nor did he seek a continuance of the hearing. Furthermore, when ordered to show cause why the complaint should not be dismissed, the Charging Party offered no explanation for his failure to proceed.

Charging Party's failure to proceed and his inability or unwillingness to demonstrate any good cause for that failure to proceed constitutes an abandonment of the complaint. This matter should therefore be dismissed.

Because CSEA has not asked for attorney's fees, none will be awarded. Charging Party should, however, be aware that any future unexcused failure to appear at either an informal settlement conference or a formal hearing could be seen as a pattern of engaging in frivolous litigation. This could lead to an assessment of quantifiable costs incurred by the Respondent, including reasonable attorney's fees, to offset the time and expenses incurred in defending the complaint.³

PROPOSED ORDER

Based upon the foregoing findings and conclusions and the entire record of this case, the complaint is hereby DISMISSED.

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final unless a party files a timely statement of exceptions with the Board itself at the headquarters office in Sacramento within 20 days of service of this Decision. In accordance with PERB Regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. See

³United Professors of California (Watts) (1984) PERB Decision No. 398-H.

California Administrative Code title 8, part III, section 32300. A document is considered "filed" when actually-received before the close of business (5:00 p.m.) on the last day set for filing, ". . .or when sent by telegraph or certified or Express United States mail, postmarked not later than the last day set for filing . . ." See California Administrative Code, title 8, part III, section 32135. Code of Civil Procedure section 1013 shall apply. Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. See California Administrative Code, title 8, part III, sections 32300, 32305, and 32140.

Dated: July 17, 1987

JAMES W. TAMM
Administrative Law Judge