

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



GARY CAVIGLIA,)	
)	
Charging Party,)	Case No. SF-CE-1805
)	
v.)	PERB Decision No. 1120
)	
MORGAN HILL UNIFIED SCHOOL)	October 13, 1995
DISTRICT,)	
)	
Respondent.)	
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Appearances: Gary Caviglia, on his own behalf; Littler, Mendelson, Fastiff, Tichy & Mathiason by Richard J. Loftus, Jr. and Sarah C. Wilson, Attorneys, for Morgan Hill Unified School District.

Before Garcia, Johnson and Caffrey, Members.

DECISION

GARCIA, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Gary Caviglia (Caviglia) of a Board agent's dismissal (attached) of his unfair practice charge. In his charge Caviglia alleged that the Morgan Hill Unified School District (District) failed to meet and negotiate with his exclusive representative, the Service Employees International Union, Local 715, AFL-CIO (SEIU) in violation of the Educational Employment Relations Act (EERA) section 3543.5 (c).¹

¹EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3543.5 reads, in pertinent part:

It shall be unlawful for a public school employer to do any of the following:

The Board has reviewed the unfair practice charge, the warning and dismissal letters, Caviglia's appeal, and the District's opposition to the appeal. The Board affirms the Board agent's dismissal consistent with the following discussion.

CAVIGLIA'S APPEAL

Caviglia filed an appeal that repeats the allegations he made in his unfair practice charge, i.e., that he was harmed by the manner in which the District and SEIU handled the settlement negotiations over his termination, and their conduct amounted to a violation of EERA.

DISTRICT'S OPPOSITION TO APPEAL

The District filed an opposition to the appeal stating that Caviglia's appeal does not comply with PERB Regulation 32635.² Also, the District agrees with the Board agent's conclusion that Caviglia lacks standing to allege a violation by the District of its duty to bargain in good faith.

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

²PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Regulation 32635 reads, in pertinent part:

The appeal shall:

- (1) State the specific issues of procedure, fact, law or rationale to which the appeal is taken;
- (2) Identify the page or part of the dismissal to which each appeal is taken;
- (3) State the grounds for each issue stated.

DISCUSSION

Caviglia's appeal restates his earlier claims and fails to identify grounds for reversal. The Board has repeatedly held that merely restating claims does not satisfy the requirements of Regulation 32635.³ Furthermore, the Board affirms that individual employees lack standing to file a charge with PERB to allege a violation of EERA section 3543.5(c).

ORDER

The unfair practice charge in Case No. SF-CE-1805 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Johnson and Caffrey joined in this Decision.

³See, e.g., University Council - American Federation of Teachers (Chan) (1994) PERB Decision No. 1062-H; Teamsters Local 137 (Illum/DeMuro) (1995) PERB Order No. Ad-265; and California School Employees Association and its San Juan Chapter #127 (Hare) (1995) PERB Decision No. 1089.

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 557-1350



July 13, 1995

Gary Caviglia

Re: **DISMISSAL OF UNFAIR PRACTICE CHARGE/REFUSAL TO ISSUE COMPLAINT**

Gary Caviglia v. Morgan Hill Unified School District
Unfair Practice Charge No. SF-CE-1805

Dear Mr. Caviglia:

The above-referenced unfair practice charge, filed on May 3, 1995, alleges that the Morgan Hill Unified School District (District) failed to meet and negotiate in good faith with the Service Employees International Union, Local 715, AFL-CIO (SEIU), the exclusive representative of Gary Caviglia's bargaining unit. This conduct is alleged to violate Government Code section 3543.5(c) of the Educational Employment Relations Act (EERA).

I indicated to you, in my attached letter dated June 27, 1995, that the above-referenced 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. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to July 11, 1995, the charge would be dismissed.

On July 10, 1995, Caviglia submitted a letter containing corrections to the statement of facts set forth in the June 27, 1995 letter.

Caviglia indicates that the December 19, 1994 letter from the District was not a notice that it intended to proceed with terminating his employment. Rather it was a notice that the District intended to recoup its alleged overpayment resulting from his leaving work early. Nevertheless, Caviglia was aware of the District's intent to terminate because of the "Skelly" hearing that was held. Other allegations included in Caviglia's July 10, 1995 do not appear to be material to charge.

The additional allegations are insufficient to overcome the deficiencies noted in the undersigned's June 27, 1995 letter. Therefore, I am dismissing the charge based on the facts and reasons stated above and those contained in my June 27, 1995 letter.

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Right to Appeal

Pursuant to Public Employment Relations Board regulations, 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. (Cal. Code of Regs., tit. 8, sec. 32635(a).) To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. (Cal. Code of Regs., tit. 8, sec. 32135.) Code of Civil Procedure section 1013 shall apply. 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 copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Cal. Code of Regs., tit. 8, sec. 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 Cal. Code of Regs., tit. 8, sec. 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. (Cal. Code of Regs., tit. 8, sec. 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.

Sincerely,

ROBERT THOMPSON
Deputy General Counsel

DONNGIN ~~UZZA~~

Regional Attorney

Attachment

cc: Sarah C. Wilson

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 557-1350



June 27, 1995

Gary Caviglia

Re: **WARNING LETTER**

Gary Caviglia v. Morgan Hill Unified School District
Unfair Practice Charge No. SF-CE-1805

Dear Mr. Caviglia:

The above-referenced unfair practice charge, filed on May 3, 1995, alleges that the Morgan Hill Unified School District (District) failed to meet and negotiate in good faith with the Service Employees International Union, Local 715, AFL-CIO (SEIU), the exclusive representative of Gary Caviglia's bargaining unit. This conduct is alleged to violate Government Code section 3543.5(c) of the Educational Employment Relations Act (EERA).

Investigation of the charge revealed the following. Caviglia was employed as a custodian by the District prior to his resignation in January 1995. In a memorandum to Caviglia dated December 6, 1994, the District accused Caviglia of leaving one hour and twenty minutes early every night for four months. The District also demanded return of the alleged overpayment, calculated at \$11.37 per hour for 77 hours. Caviglia was represented in a "Skelly" hearing by SEIU steward Jesus Estrada on December 12, 1994. By letter dated December 19, 1994, the District informed Caviglia that it would proceed with its intended termination, effective January 13, 1995. SEIU voted not to support Caviglia in an appeal of the termination.

According to SEIU, Caviglia indicated that he would not contest the termination but wished to negotiate a substitute result. SEIU negotiated an agreement whereby the resignation date was extended to January 20, 1995, Caviglia would receive unemployment benefits, vacation pay and wages from January 1 through January 20, 1995. SEIU provided to the undersigned a copy of a handwritten memorandum purporting to be from Caviglia to Lee Cunningham, Director of Personnel, file stamped on January 13, 1995, stating that his resignation date would be January 20, 1995. In a subsequent memorandum, Caviglia wrote to Cunningham the following: "I was in error on my resignation date. It should read . . . 'Effective 31 January 1995.'" This memorandum was left on Cunningham's desk on January 31, 1995.

In response to this change, the District took the position that it was excused from performance of the initial settlement

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agreement based on Caviglia's breach of its terms and consequently withheld \$843.92 (the amount it contended was owed by Caviglia) from Caviglia's final paycheck. SEIU representative Kazi Fried spoke to Cunningham on February 3, 1995 regarding the matter. According to SEIU, the District proposed to restore the deducted amount if Caviglia would agree to a repayment plan. SEIU refused to accept this offer and insisted on the original terms of the agreement.

By letter dated March 25, 1995, Caviglia complained to SEIU President Marlene Smith that the District had yet to repay the \$843.92 and had incorrectly calculated his pay for the month of January 1995. The figure was short between \$126.70 and \$190.52. According to Caviglia, Fried told him that Cunningham had admitted that deduction of the \$843.92 was illegal and that the money would be restored.

Caviglia alleges that the District failed to return telephone calls made by SEIU, and as a result, a face-to-face meeting of the principals involved and a reasonable settlement failed to materialize.

Based on the facts stated above, the charge as presently written fails to state a prima facie violation of the EERA for the reasons that follow.

Caviglia lacks standing to allege that the District has failed to meet and negotiate in good faith with SEIU. In Oxnard School District (1988) PERB Dec. No. 667, the Public Employment Relations Board (PERB) noted that section 3543.5(c) makes it unlawful for a public school employer to "refuse or fail to meet and negotiate in good faith with an exclusive representative." PERB further noted that section 3543.2 requires the employer to meet and negotiate "with and only with representatives of employee organizations selected as exclusive representative of appropriate units." (Id. at pp. 8-9; emphasis in original.) Based on this scheme of reciprocal duties, PERB held that the employer's duty to negotiate is owed only to the exclusive representative employee organization, and consequently, declined to grant individual employees the right to compel enforcement of this duty through an unfair practice charge directed against the employer. (Id., at p. 9.) In short, Oxnard School District held that employees are permitted only to enforce their individual rights and not those of an organizational nature. (Id. at p. 12.) The charge appears only to allege a violation of an organizational right under the EERA and must therefore be dismissed.

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For these reasons the charge, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts which would correct the deficiencies explained above, please amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled First Amended Charge, contain all 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 July 11, 1995, I shall dismiss your charge. If you have any questions, please call me at (415) 557-1350.

Sincerely,

DONN GINOZA
Regional Attorney