

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

MARY HUGHES-TUTASS,

Charging Party,

v.

WEST CONTRA COSTA UNIFIED SCHOOL
DISTRICT,

Respondent.

Case No. SF-CE-2142-E

PERB Decision No. 1427

April 19, 2001

Appearance: Mary Hughes-Tutass, on her own behalf.

Before Amador, Baker and Whitehead, Members.

DECISION

AMADOR, Member: This case comes before the Public Employment Relations Board (Board) on appeal by Mary Hughes-Tutass (Hughes-Tutass) to a Board agent's dismissal (attached) of her unfair practice charge. Hughes-Tutass alleged that the West Contra Costa Unified School District violated numerous sections of the Educational Employment Relations Act (EERA)¹ with regard to the manner in which it handled grievances filed by Hughes-Tutass.

After reviewing the entire record, the Board hereby adopts the dismissal letter as the decision of the Board itself.

¹ EERA is codified at Government Code section 3540 et seq.

ORDER

The unfair practice charge in Case No. SF-CE-2142-E is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Members Baker and Whitehead joined in this Decision.

October 31, 2000

Mr. F. Anthony Edwards
Seibel, Finta & Edwards
1850 Mt. Diablo Blvd., Suite 650
Walnut Creek, California 94596

Re: Mary Hughes-Tutass v. West Contra Costa Unified School District
Unfair Practice Charge No. SF-CE-2142-E
DISMISSAL LETTER

Dear Mr. Edwards:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on June 14, 2000. The Charging Party, Mary Hughes-Tutass, alleges that the West Contra Costa Unified School District violated the Educational Employment Relations Act¹. However, as explained in the attached September 13, 2000 Warning Letter due to the lack of specificity in the original charge and the subsequently received information it is unclear how the District violated EERA.

I indicated to you in my attached letter dated September 13, 2000, 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 September 22, 2000, the charge would be dismissed. Because Ms. Hughes-Tutass expressed an interest in amending her charge, I extended the due date to receive an amended charge to September 27, 2000.

On September 27, 2000, I received a second amended charge from Ms. Hughes-Tutass. The charge however, contains nearly the identical information as was contained in the first amended charge received by the San Francisco Regional office on August 25, 2000. Thus, as explained in the Warning Letter, the information received August 25th fails to state a prima facie violation of EERA. Therefore the second amended charge also fails to state a prima facie violation of EERA.

¹ EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

It should be noted that the second amended charge contained attachments that were not served on Respondent. Those attachments were similar to attachments to the first amended charge, which were also not served on Respondent. The many letters and memoranda which constitute the attachments to both of the amended charges do not assist Ms. Hughes-Tutass to establish a prima facie violation of EERA.

On October 12, 2000, I received from Ms. Hughes-Tutass a third amended charge also containing nearly the identical information received on August 25th. Again because the information received on August 25, 2000 failed to state a prima facie violation of EERA, the information received on October 12, 2000 also fails to state a prima facie violation of EERA. Therefore, I am dismissing the charge based on the facts and reasons contained in my September 13, 2000 letter.

Right to Appeal

Pursuant to PERB Regulations², 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. (Regulation 32635(a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Regulations 32135(a) and 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Regulations 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

² PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Copies of the Regulations may be purchased from PERB's Publications Coordinator, 1031 18th Street, Sacramento, CA 95814-4174, and the text is available at www.perb.ca.gov.

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. (Regulation 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 Regulation 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. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Regulation 32135(c).)

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. (Regulation 32132.)

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

By _____
Marie A. Nakamura
Board Agent

Attachment

cc: Marlene L. Sacks

MAN

September 13, 2000

F. Anthony Edwards
Seibel, Finta & Edwards, L.L.P.
1850 Mt. Diablo Blvd., Suite 650
Walnut Creek, California 94596

Re: Mary Hughes-Tutass v. West Contra Costa Unified School District
Unfair Practice Charge No. SF-CE-2142-E
WARNING LETTER

Dear Mr. Edwards,

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on June 14, 2000. The Charging Party, Mary Hughes-Tutass, alleges that the West Contra Costa Unified School District (District) violated the Educational Employment Relations Act (EERA)¹. However, due to a lack of specificity in the charge it is unclear how the District violated EERA.

Facts

The charge states that the District conspired with the United Teachers of Richmond (UTR) in order to ignore Ms. Hughes-Tutass' "contractual and/or legal rights to fair representation and due process." Also, the charge states without specificity that in the past Ms. Hughes-Tutass "grieved the lack of legal compliance and safety violations." Further Ms. Hughes-Tutass asserts that the District through the Principal at Murphy School (no name provided), Suzie Van de Veer, Area Director, and Linda Lester (no title provided) failed to assist her. Ms. Hughes-Tutass asserts that Ms. Lester caused Ms. Hughes-Tutass to not be rehired at Hayward State University. The charge concludes with the following statement, "I believe that I have missed out on promotions and advancement opportunities due to this activity."

Due to the lack of specificity of the charge, on August 23, 2000, I sent to you a letter requesting an amended charge. The letter chronicled my telephone conversations with you and Ms. Hughes-Tutass in July of 2000 explaining the need to amend this charge. In the letter I stated that the original charge did not "include the requisite precise and detailed statement of the conduct that she asserts constitutes an unfair practice." I explained that in order to proceed

¹ EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

with my investigation I needed to receive the original amended charge, and the original proof of service showing that a copy of the amended charge was served on the Respondent by September 1, 2000. In response to the letter you left me a voice mail on August 25, 2000 explaining that you were in New York and unable to meet the September 1st deadline. Therefore on August 28th I spoke with your Assistant, Nedda Bass, and extended the deadline until September 11, 2000.

On August 25, 2000, an amended charge was received in PERB's San Francisco Regional office. However, the amended charge was not the original and was not served on Respondent. It however, did assert that the District failed and refused to meet and negotiate with Ms. Hughes-Tutass or the UTR to address grievances and complaints filed by Ms. Hughes-Tutass. The new information provided states that Ms. Hughes-Tutass filed a grievance in May 1999 with the District, but there is no indication what action by the District lead to the grievance. In late June of 1999 Ms. Hughes-Tutass met with the District's representative, Linda Lester, and the District denied the grievance. Ms. Hughes-Tutass attempted as an individual to take the grievance to arbitration but the District's attorney, Marlene Sacks, informed Ms. Hughes-Tutass that the District would not proceed to arbitration without the intervention of the UTR. At this time the District was aware that both the President and Vice-president of the UTR were defendants in a lawsuit wherein Ms. Hughes-Tutass was a plaintiff. On or about May 25, 2000, the UTR informed Ms. Hughes-Tutass that they would not take her grievance to arbitration. Thus Ms. Hughes-Tutass asserts that her statute of limitations against the District did not begin to run until the UTR denied her grievance. In addition Ms. Hughes-Tutass sent many letters and memoranda, however, none of them specify the nature of the grievance filed in May of 1999.

On September 11, 2000 I received a fax from your office. The fax however lacks the factual specificity required for me to proceed with my investigation. It combines Ms. Hughes-Tutass' charge with that of Deborah Kerreos, a Charging Party, in two related charges and refers to both parties as "Claimants" without making any factual distinctions among the charges or the parties. In addition the fax refers to "Respondents" without differentiating between the District and the UTR. Although the fax does assert that "Respondents" violate Government Code section 3543.3, 3543.5 and 3543.6, it lacks the factual specificity required to determine how the actions of the "Respondents" violated these sections of the Government Code.

On September 12, 2000, I spoke with you and explained that I would be sending you a letter explaining the deficiencies in this charge.

Discussion

Because Ms. Hughes-Tutass has failed to provide adequate factual information, the charge fails to state a prima facie violation within PERB's jurisdiction. Ms. Hughes-Tutass' charge against the District did not state the section of the Government Code alleged to be violated nor did it contain a clear and concise statement of the facts and conduct alleged to constitute an unfair practice as required by the Regulations of the Public Employment Relations Board section 32615. Failure to provide a clear and concise statement of the facts as required by 32615(a)(5), limits my ability to find a prima facie violation within the jurisdiction of PERB. PERB Regulation 32615(a)(5) requires, inter alia, that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." Thus, the charging party's burden includes alleging the "who, what, when, where and how" of an unfair practice. (State of California (Department of Food and Agriculture) (1994) PERB Decision No. 1071-S, citing United Teachers-Los Angeles (Ragsdale) (1992) PERB Decision No. 944.) Mere legal conclusions are not sufficient to state a prima facie case. (Ibid.; Charter Oak Unified School District (1991) PERB Decision No. 873.)

In the additional information received in our San Francisco office on August 25, 2000, Ms. Hughes-Tutass states that the District failed and refused to meet and negotiate in good faith with her or her exclusive representative. If by this statement Ms. Hughes-Tutass asserts that the District violated EERA section 3543.5(c), the school districts duty to meet and negotiate in good faith with an exclusive representative, Ms. Hughes-Tutass is without standing to pursue such a charge. Only the exclusive representative has standing to pursue such an unfair practice charge. (Oxnard School District (Gorcey/Tripp) (1988) PERB Decision No. 667.) Therefore as an individual Ms. Hughes-Tutass is foreclosed from bringing such a charge.

Also, Ms. Hughes-Tutass asserts that the statute of limitation has not expired on her claim. EERA section 3541.5(a)(1) prohibits PERB from issuing a complaint with respect to "any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (Gavilan Joint Community College District (1996) PERB Decision No. 1177.) The charging party bears the burden of demonstrating that the charge is timely filed. (Tehachapi Unified School District (1993) PERB Decision No. 1024.) Without a precise determination of the nature of the alleged violation, it is impossible to determine when Ms. Hughes-Tutass knew or should have known of the conduct underlying the charge. Thus the Ms. Hughes-Tutass has failed to meet her burden of demonstrating that the charge is timely filed.

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 have the case number written on the top right hand corner of the charge form. The amended charge must be served on the

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respondent's representative and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before September 22, 2000, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Marie A. Nakamura
Board Agent

MAN