

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

LOS ANGELES SCHOOL POLICE OFFICERS
ASSOCIATION,

Charging Party,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. LA-CE-4196-E

PERB Decision No. 1450

June 25, 2001

Appearances: Lackie & Dammeier by Dieter C. Dammeier, Attorney, for Los Angeles School Police Officers Association; Paul, Hastings, Janofsky & Walker by Niloofar Nejat-Bina, Attorney, for Los Angeles Unified School District.

Before Amador, Baker and Whitehead, Members.

DECISION

AMADOR, Member: This case comes before the Public Employment Relations Board (Board) on appeal by the Los Angeles School Police Officers Association (LASPOA) to a Board agent's dismissal (attached) of their unfair practice charge. The charge alleged that the Los Angeles Unified School District (District) violated section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA)¹ by unilaterally changing the terms and conditions of employment when it issued a new Policies and Procedures Manual.

¹ EERA is codified at Government Code section 3540 et seq. Section 3543.5 states, in pertinent part:

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

After reviewing the entire record, including LASPOA's appeal and the District's response, the Board finds the Board agent's dismissal letter to be free from prejudicial error and adopts it as the decision of the Board itself, consistent with the following discussion.

DISCUSSION

The Board agent found that the unfair practice charge was untimely filed and identified June 24, 1999, as the date on which the statute of limitations began to run. Although the Board agrees that the charge is untimely filed, we conclude that the statute of limitations began to run on August 31, 1999, rather than June 24, 1999. The District made it clear that LASPOA had until August 31, 1999 to state its objections to the new policies and procedures manual. The District also made it clear to LASPOA that it intended to proceed with implementing the manual after that date. Therefore, LASPOA had actual notice of the District's clear intent to implement the new policies on August 31, 1999. LASPOA waited almost ten months after that date, until June 13, 2000, to file an unfair practice charge. As a result, the charge is untimely.

LASPOA's request for oral argument is hereby denied.

(a) 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. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

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

ORDER

The unfair practice charge in Case No. LA-CE-4196-E is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Members Baker and Whitehead joined in this Decision.

Dismissal Letter

April 2, 2001

Timothy Pescatello
Lackie & Dammeier LLP
10970 Arrow Route, Suite 202
Rancho Cucamonga, CA 91730

Re: **DISMISSAL LETTER/REFUSAL TO ISSUE COMPLAINT**
Los Angeles School Police Officers Association v. Los Angeles Unified
School District
Unfair Practice Charge No. LA-CE-4196; First Amended Charge

Dear Mr. Pescatello:

The above-referenced charge, filed June 13, 2000, alleges the Los Angeles Unified School District (District) unilaterally changed several terms and conditions of employment and refused to bargain over negotiable subjects. The Los Angeles School Police Officers Association (LASPOA or Association) alleges this conduct violates Government Code section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA or Act).

I indicated to you, in my attached letter dated November 27, 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 December 3, 2000, the charge would be dismissed.

On December 4, 2000, Charging Party filed a first amended charge. The amended charge contends the charge is timely filed as the District wavered in its intent to adopt the new personnel manual. A review of relevant facts is provided below.

On June 24, 1999, the District's Chief of Police, Wesley Mitchell, distributed a copy of the new Policies and Procedures Manual to Association representatives. Chief Mitchell instructed the Association to review the new manual and present any problems to the District as soon as possible. On that same day, Association attorney Dieter Dammeier sent a letter to the District stating that the new procedures manual changed the terms and conditions of employment and requested to meet and confer over the changes.

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On August 6, 1999, Chief Mitchell sent a response to Mr. Dammeier's letter, stating that any possible changes in terms and conditions should be brought to the attention of Richard Page. Additionally, the letter stated in relevant part:

Although Assistant Chief Page will gladly meet with you, the Department intends to proceed with this project as soon as possible. Therefore, please respond with any concerns no later than August 31, 1999. Absent any specific concerns as of this date, it is the intent of the Department to proceed with this project.

On August 11, 1999, Mr. Dammeier responded to Chief Mitchell's letter, stating the August 31, 1999, deadline was "unreasonable" and did not provide the Association with enough time. Additionally, Mr. Dammeier stated the District's willingness to discuss the matters did not constitute a "meet and confer" under the statute. Finally, Mr. Dammeier stated the Association had convened a committee to review the manual and that he would contact the District when the committee had concluded its review.

On August 18, 1999, Chief Mitchell responded to Mr. Dammeier's August 11, 1999, letter. Chief Mitchell's response stated the District's belief that no changes had been made to the terms and conditions of employment. Chief Mitchell concluded by stating:

It is felt that three weeks is ample time for this review to be completed. I appreciate your commitment to expedite the review; however, as previously stated, absent any specific concerns as of August 31, 1999, the Department intends to proceed with this project. If at any time during this review, you identify items you believe are subject to meet and confer, please contact Assistant Chief Richard Page at (213) 625-6069.

On December 8, 1999, Mr. Dammeier sent a letter to Chief Mitchell regarding another unfair practice charge (LA-CE-4140). In this letter, Mr. Dammeier states that it appears supervisors are already implementing the new personnel manual without distribution to bargaining unit members. Additionally, Mr. Dammeier alleges the District is unilaterally implementing new policies and procedures from the manual.

On March 17, 2000, Mr. Dammeier responded to Chief Mitchell's August 18, 1999, letter. In this response, Mr. Dammeier stated the Association had completed its review of the new manual and

had found numerous changes in the terms and conditions of employment. Mr. Dammeier also requested to meet and confer over these changes.

On March 21, 2000, Chief Mitchell responded to the Association's request stating as follows:

As noted in my letter to you on August 18, 1999 regarding this subject, we do not believe the new manual constitutes changes in existing policy or practices and is therefore not subject to meet and confer requirements.

The Los Angeles School Police Association was provided with a copy of the new manual prior to its issuance and encouraged to review the new manual and bring to the department's attention any specific concerns they may have. A three-week time period was afforded for this review and the LASPA was advised that absent any concerns being brought to our attention, the department intended to go forward with this project.

Approximately seven months later, the department had not received a response from you or the LASPA. It was not until the department began issuing this new manual to personnel that we now receive your letter with regards to concerns.

On April 14, 2000, Association attorney Tim Pescatello responded to Chief Mitchell's letter, stating the Association wished to meet and confer over more than 10 changes in terms and conditions of employment. On April 20, 2000, Chief Mitchell responded to Mr. Pescatello, stating the District would not agree to meet and confer with regards to the new manual, and would only hold one meeting to discuss the manual with Association representatives.

On June 13, 2000, the Association filed the above-referenced unfair practice charge.

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

Government Code section 3541.5(a)(1) prohibits the Board from issuing a charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge. In a unilateral change case, the statute of limitations begins to run

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when the union has "actual or constructive knowledge" of the employer's "clear intent" to implement a new policy or procedure. (Los Angeles Unified School District (1996) PERB Decision No. 1181.) The amended charge contends that since the District did not immediately distribute the personnel manual after the August 31, 2000 deadline, the Association had every reason to believe the District had backed down from its decision to implement the new manual. However, facts presented by the Association refute this claim.

The Association became aware on June 24, 1999, of the District's intent to implement the new policies and procedures manual. The Association was also aware that if they did not state clear objections before August 31, 1999, the new manual would be implemented. Finally, in December 1999, the Association's attorney acknowledged that at least one of the changes in the personnel manual was already being implemented. As such, the Association's claim that the District wavered in its intent is not supported by the facts. Thus, the allegations of unilateral change are time barred.

The Association also contends the District refused to bargain over the changes in terms and conditions of employment. However, facts provided demonstrate the union waived its right to bargain the changes. Although unilateral changes are generally considered per se violations, an employer may act unilaterally if it offers written notice and reasonable opportunity to meet and the employee organization does not protest or request bargaining. (Stockton Police Officers' Association v. City of Stockton (1988) 206 Cal.App.3d 62.) Herein, the District provided the Association with more than two months to review the manual and present specific areas of concern. Additionally, the Association was aware of the District's August 31, 1999 deadline. However, rather than responding by the deadline or providing the District with a new deadline, the Association waited nearly seven months to provide the District with specific areas of concern. As such, the District's conduct in implementing the new manual after providing notice and an opportunity to bargain, does not state a prima facie violation of the EERA.

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 Regs., tit. 8, sec. 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.

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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. (Cal. Code Regs., tit. 8, sec. 32135(a); see also Cal. Code Regs., tit. 8, sec. 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 Cal. Code Regs., tit. 8, sec. 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. (Cal. Code Regs., tit. 8, secs. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 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

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 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 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. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, sec. 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

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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 Regs., tit. 8, sec. 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 - _____
Kristin L. Rosi
Regional Attorney

Attachment

cc: Niloofar Nejat-Bina

Warning Letter

November 27, 2000

Timothy Pescatello
Lackie & Dammeier LLP
10970 Arrow Route, Suite 202
Rancho Cucamonga, CA 91730

Re: WARNING LETTER
Los Angeles School Police Officers Association v. Los Angeles Unified
School District
Unfair Practice Charge No. LA-CE-4196

Dear Mr. Pescatello:

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Investigation of the charge revealed the following. The District and the Association are parties to a collective bargaining agreement (Agreement) which expired on June 30, 2000. In addition to the Agreement, bargaining unit members followed the provisions of the Policies and Procedures Manual.

On June 24, 1999, the District's Chief of Police, Wesley Mitchell, distributed a copy of the new Policies and Procedures Manual to Association representatives. Chief Mitchell instructed the Association to review the new manual and present any problems to the District as soon as possible. On that same day, Association attorney Dieter Dammeier sent a letter to the District stating that the new procedures manual changed the terms and conditions of employment and requested to meet and confer over the changes.

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

Government Code section 3541.5(a)(1) prohibits the Board from issuing a charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge. In a unilateral change case, the statute of limitations begins to run when the union has "actual or constructive knowledge" of the employer's "clear intent" to implement a new policy or procedure. (Los Angeles Unified School District (1996) PERB Decision No. 1181.) Herein, the Association became aware on June 24, 1999, of the District's intent to implement the new policies and procedures manual. Moreover, the Association was aware that if they did not state clear objections before August 31, 1999, the new manual would be implemented. Thus, the Association was aware nearly a year before it filed its charge, that the alleged unilateral changes would be taking place. As such, the allegation of unilateral change is time barred.

The Association also contends the District refused to bargain over the changes in terms and conditions of employment. However, facts provided demonstrate the union waived its right to bargain

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the changes. Although unilateral changes are generally considered per se violations, an employer may act unilaterally if it offers written notice and reasonable opportunity to meet and employee organization does not protest or request bargaining. (Stockton Police Officers' Association v. City of Stockton (1988) 206 Cal.App.3d 62.) Herein, the District provided the Association with more than two months to review the manual and present specific areas of concern. Additionally, the Association was aware of the District's August 31, 1999 deadline. However, rather than responding by the deadline or providing the District with a new deadline, the Association waited nearly seven months to provide the District with specific areas of concern. As such, the District's conduct in implementing the new manual after providing notice and an opportunity to bargain, does not state a prima facie violation of the EERA.

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 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 December 3, 2000, I shall dismiss your charge. If you have any questions, please call me at (510) 622-1016.

Sincerely,

Kristin L. Rosi
Regional Attorney