

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

SANTA ANA EDUCATORS ASSOCIATION,

Charging Party,

v.

SANTA ANA UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. LA-CE-4353-E

PERB Decision No. 1495

July 31, 2002

Appearance: Schwartz, Steinsapir, Dohrmann & Sommers by Henry M. Willis, Attorney, for Santa Ana Educators Association.

Before Baker, Whitehead and Neima, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Santa Ana Educators Association (Association) of a Board agent's dismissal (attached) of its unfair practice charge for failure to state a prima facie case. The charge alleged that the Santa Ana Unified School District (District) violated the Educational Employment Relations Act (EERA)<sup>1</sup> by unilaterally changing policies regarding: (1) the assignment of authority for individual education plans to counselors; and (2) the type, schedule, and amount of training provided to counselors without bargaining with the Association or obtaining its agreement to these changes. The Association alleged that this

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<sup>1</sup>EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

conduct constituted a violation of EERA sections 3543.1(a), 3543.2(a), 3543.3, 3543.5(b) and (c).<sup>2</sup>

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<sup>2</sup>Section 3543.1(a) provides:

(a) Employee organizations shall have the right to represent their members in their employment relations with public school employers, except that once an employee organization is recognized or certified as the exclusive representative of an appropriate unit pursuant to Section 3544.1 or 3544.7, respectively, only that employee organization may represent that unit in their employment relations with the public school employer. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership.

Section 3543.2(a) provides:

The scope of representation shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment. "Terms and conditions of employment" mean health and welfare benefits as defined by Section 53200, leave, transfer and reassignment policies, safety conditions of employment, class size, procedures to be used for the evaluation of employees, organizational security pursuant to Section 3546, procedures for processing grievances pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8, the layoff of probationary certificated school district employees, pursuant to Section 44959.5 of the Education Code, and alternative compensation or benefits for employees adversely affected by pension limitations pursuant to Section 22316 of the Education Code, to the extent deemed reasonable and without violating the intent and purposes of Section 415 of the Internal Revenue Code. In addition, the exclusive representative of certificated personnel has the right to consult on the definition of educational objectives, the determination of the content of courses and curriculum, and the selection of textbooks to the extent such matters are within the discretion of the public school employer under the law. All matters not specifically enumerated are reserved to the public school employer and may not be a subject of meeting and negotiating, provided that nothing herein may be construed to limit the right of the public school employer to consult with any employees or employee organization on any matter outside the scope of representation.

The Board has reviewed the entire record in this case, including the unfair practice charge, amended charge, the Board agent's dismissal and the Association's appeal. The Board finds the Board agent's dismissal to be free from prejudicial error and adopts it as the decision of the Board itself subject to the following discussion of points raised by the Association in its appeal.

### DISCUSSION

In its appeal, the Association claims that the Board agent based her decision on the incorrect assumption that the policies had been reduced to writing. According to the Association, neither the old nor the newly implemented policies were written, nor did the Association receive any formal written notice of the change in policies.

The Association further asserts that it is not necessary to spell out the details of the policies in order to state a prima facie case under EERA. On the contrary, the Association believes that the General Counsel's office imposes an unreasonable standard for pleading a

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Section 3543.3 provides:

A public school employer or such representatives as it may designate who may, but need not be, subject to either certification requirements or requirements for classified employees set forth in the Education Code, shall meet and negotiate with and only with representatives of employee organizations selected as exclusive representatives of appropriate units upon request with regard to matters within the scope of representation.

Section 3543.5 provides, in pertinent part:

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

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

prima facie case that is out of step with state and federal laws. The Association reasons that common law pleading was abolished 150 years ago in favor of code pleading, and suggests that PERB follow other states and do the same.

The Board agent correctly dismissed this charge with its conclusory allegations. Under PERB Regulation 32615(a)(5),<sup>3</sup> a charge must contain “a clear and concise statement of the facts.” The charge did not state 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; United Teachers-Los Angeles (Ragsdale) (1992) PERB Decision No. 944.) Mere legal conclusions are insufficient to state a prima facie case. (Ibid.)

In this case, the charge does not provide any comparison between the alleged old and new policies, but only states that the District changed policies covering workload and training. Further, the Association inaccurately states that the Board agent based her decision on the assumption that the old and new policies were written. There is no indication in the warning letter or dismissal that the Board agent made such an assumption. Rather, the Board agent stated that, after being provided with several opportunities, the Association failed to explain the old and new policies. The bare allegation, that the policies were changed, is a mere “legal conclusion” and therefore does not state a prima facie violation of EERA.

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

<sup>3</sup>PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

ORDER

The unfair practice charge in Case No. LA-CE-4353-E is hereby DISMISSED  
WITHOUT LEAVE TO AMEND.

Members Baker and Neima joined in this Decision.

## Dismissal Letter

February 13, 2002

Henry M. Willis , Attorney  
Schwartz, Steinsapir, Dohrmann & Sommers  
6300 Wilshire Boulevard, Suite 2000  
Los Angeles, CA 90048-5202

Re: Santa Ana Educators Association v. Santa Ana Unified School District  
Unfair Practice Charge No. LA-CE-4353-E; Second Amended Charge  
**DISMISSAL LETTER**

Dear Mr. Willis:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 7, 2001. The Santa Ana Educators Association alleges that the Santa Ana Unified School District violated the Educational Employment Relations Act (EERA)<sup>1</sup> by unilaterally changing training policies and the assignment of IEPs.

I indicated to you in my attached letter dated January 2, 2002, 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 January 9, 2002, the charge would be dismissed.

The original charge stated in its entirety:

The Board of Education of the Santa Ana Unified School District ("the District") has changed (1) its policies regarding the assignment of authority for creation of individual educational plans to counselors and (2) its policies regarding the type, schedule and amount of training provided to counselors without bargaining with the Santa Ana Educators Association ("the Association") or obtaining its agreement to these changes.

On January 9, 2002, Charging Party filed a first amended charge in the Los Angeles Regional Office. Due to a clerical error, the charge was mislabeled as a new unfair practice, and I was informed that no amended charge had been filed. As such, on January 11, 2002, I dismissed

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<sup>1</sup> 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](http://www.perb.ca.gov).

this charge. On January 14, 2002, I received the first amended charge from the Los Angeles Regional Office. As such, on January 28, 2002, the dismissal was retracted.

The first amended charge adds only the following line to the original charge:

The Association learned of these changes in late June, 2001.

On February 4, 2002, Charging Party filed a second amended charge. The second amended charge adds only one additional sentence to the charge, as underlined below. Thus, the entire factual portion of the charge reads as follows:

The Board of Education of the Santa Ana Unified School District (“the District”) has changed (1) its policies regarding the assignment of authority for creation of individual educational plans to counselors and (2) its policies regarding the type, schedule and amount of training provided to counselors without bargaining with the Santa Ana Educators Association (“the Association”) or obtaining its agreement to these changes.

The District made these changes in its policies regarding the assignment of authority for creation of individual educational plans to counselors and its policies regarding the type, schedule and amount of training provided to counselors on or about June 10, 2001, without notice to the Association. The particular employees affected by these changes are Leticia Vargas, a counselor at Saddleback High School, and Debbie Huffman, a counselor at Valley High School. The Association learned of these changes in late June 2001.

Based on the facts provided in the original and amended charges, the charge still fails to state a prima facie violation of the EERA, for the reasons provided below.

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.)

More specifically, with regard to allegations of unilateral change, the charging party must demonstrate: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented before the employer notified the exclusive representative and gave it an opportunity to request negotiations. (Walnut Valley Unified School District (1981) PERB Decision No. 160; Grant Joint Union High School District (1982) PERB Decision No. 196.)

Herein, it is impossible to determine if the employer unilaterally changed any of the policies alleged, as the Charging Party has failed, although given several opportunities, to provide PERB with either the old policies or the newly implemented policies. Thus, this charge must be dismissed as Charging Party has failed to meet its burden.

### Right to Appeal

Pursuant to PERB Regulations,<sup>2</sup> 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  
Attn: Appeals Assistant  
1031 18<sup>th</sup> 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. (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

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<sup>2</sup> PERB’s Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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

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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 know, 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  
General Counsel

By \_\_\_\_\_  
Kristin L. Rosi  
Regional Attorney

Attachment

cc: Keith Breon

KLR

## Warning Letter

January 2, 2002

Henry M. Willis, Attorney  
Schwartz, Steinsapir, Dohrmann & Sommers  
6300 Wilshire Blvd., Suite 2000  
Los Angeles, CA 90048-5202

Re: Santa Ana Educators Association v. Santa Ana Unified School District  
Unfair Practice Charge No. LA-CE-4353-E  
**WARNING LETTER**

Dear Mr. Willis:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 7, 2001. The Santa Ana Educators Association alleges that the Santa Ana Unified School District violated the Educational Employment Relations Act (EERA)<sup>1</sup> by unilaterally changing training policies and the assignment of IEPs.

The Board of Education of the Santa Ana Unified School District (“the District”) has changed (1) its policies regarding the assignment of authority for creation of individual educational plans to counselors and (2) its policies regarding the type, schedule and amount of training provided to counselors without bargaining with the Santa Ana Educators Association (“the Association”) or obtaining its agreement to these changes.

On December 19, 2001, I telephoned Charging Party’s representative Henry Willis, to discuss the deficiencies in this charge. I informed Mr. Willis that an amended charge needed to be filed and that such charge needed to include the applicable dates and facts surrounding the above allegations. Mr. Willis indicated he would file an amended charge by December 24, 2001. To date, I have not received an amended charge.

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<sup>1</sup> 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](http://www.perb.ca.gov).

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.

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.) As the charge includes none of the relevant facts, the charge fails to state a prima facie case.

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 that 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 January 9, 2002, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Kristin L. Rosi  
Regional Attorney

KLR