STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ROBERT RAY BRADLEY, Charging Party, V. LOS ANGELES COMMUNITY COLLEGE DISTRICT, Respondent.	)	Case No. LA-CE-2402 PERB Decision No. 618 March 31, 1987

Appearances; Robert Ray Bradley, on his own behalf; Mary L. Dowell, Attorney, for Los Angeles Community College District.

Before Hesse, Chairperson; Porter and Craib, Members.

DECISION

This case is before the Public Employment Relations Board (Board) on appeal by charging party of the Board agent's dismissal, attached hereto, of his charge alleging that the respondent violated the Educational Employment Relations Act (EERA) section 3543.5(c).

We have reviewed the dismissal and, finding it free from prejudicial error, adopt it as the Decision of the Board itself.[1]

[1]Member Porter would affirm also on the basis that an individual does not have standing to file a charge alleging a violation of EERA section 3543.5(c). (See Member Porter's Dissent in Riverside Unified School District (1986) PERB Decision No. 571.)

ORDER

The unfair practice charge in Case No. LA-CE-2402 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

By the BOARD.

PUBLIC EMPLOYMENT RELATIONS BOARD
Headquarters Office
1031 18th Street
Sacramento, CA 95814-4174
(916) 322-3088

December 22, 1986

Mr. Robert Ray Bradley

RE: Robert Bradley v. Los Angeles Community College District, Case No. LA-CE-2402

Dear Mr. Bradley:

You have filed a charge against Respondent Los Angeles Community College District (District) alleging that it has violated Educational Employment Relations Act (EERA) section 3543.5(c) by refusing to accept a performance evaluation which you participated in preparing for another employee and by permitting that employee to file a grievance regarding the evaluation beyond the 20-day time limit contained in the applicable collective bargaining agreement.

I indicated to you in my attached letter dated December 11, 1986, 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 accordingly. You were further advised that unless you amended the charge to state a prima facie case, or withdrew it prior to December 12, 1986, it would be dismissed.

I have not received either a request for withdrawal or an amended charge and am therefore dismissing the charge based on the facts and reasons contained in my December 11, 1986 letter.

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 (California Administrative Code, title 8, section 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 (5:00 p.m.) or sent by telegraph, certified or Express United States mail postmarked not later than the last date set for filing. Code of Civil Procedure section 1013 shall apply, (section 32135). 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 calendar days following the date of service of the appeal (section 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 section 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 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 (section 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,

JEFFREY SLOAN
General Counsel

By _____
Jorge A. Leon
Staff Attorney

Attachment

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PUBLIC EMPLOYMENT RELATIONS BOARD
Headquarters Office
1031 18th Street
Sacramento, California 95814
(916) 322-3088

December 11, 1986

Mr. Robert Ray Bradley

RE: Robert Bradley v. Los Angeles Community College District, Case No. LA-CE-2402

Dear Mr. Bradley:

You have filed a charge against Respondent Los Angeles Community College District (District) alleging that it has violated Educational Employment Relations Act (EERA) section 3543.5(c) by refusing to accept a performance evaluation which you participated in preparing for another employee and by permitting that employee to file a grievance regarding the evaluation beyond the 20-day time limit contained in the applicable collective bargaining agreement.

My investigation has revealed the following information.

You are employed by Respondent as an instructor at Pierce College. You serve as Chairman of the Department of Business Administration and are a member of the bargaining unit exclusively represented by the American Federation of Teachers, College Guild, Local 1521 (AFT).

At the end of the Fall, 1985 semester you and other members of the department evaluation committee prepared a peer evaluation on instructor Al Partington, giving him an "unsatisfactory" overall rating, principally based on extensive unexplained absences from work. Initially, Partington approached Vice President for Academic Affairs Jean Loucks and discussed the matter with her. She replied by memo dated January 30, 1986, concluding that it appeared that the committee had abided by the collective bargaining agreement provisions relating to such evaluations. Later, however, on April 7, 1986, Loucks sent a memo to Partington stating that she had met with you and was now of the opinion that there had been some irregularities in the evaluation procedures, particularly regarding Partington's right to challenge a member of the committee. On April 15, 1986, Mr. Partington filed a grievance alleging that he was

denied his right to challenge a member of the committee and that the procedure used in the selection of the department representative to the committee was flawed. On April 28, 1986, Loucks issued a memo in which she granted the grievance, and requiring the committee to conduct the evaluation anew.

On May 7, 1986, you filed a grievance requesting that Loucks accept the original evaluation on Partington, asserting that the evaluation was properly done and that there were no procedural infirmities.

The collective bargaining agreement in effect between the District and the AFT contains a comprehensive provision relating to procedures for evaluation of faculty members by peers. That provision is included at Article 19, section H.7.a. The agreement also contains provisions relating to Administrative Evaluation (Section H.7.b.) and to Review of Performance Report. (Section H.7.c.)

The agreement provides a 20-day deadline for the filing of grievances. (Article 28, section D.I.) and a further provision which reads as follows:

> Failure of the grievant(s) to act on any grievance within the prescribed time limits, unless mutual agreement to extend the time has been reached, shall conclude the grievance. (Article 28, section C.I)

You assert that AFT represents Partington in this dispute, and that although the collective bargaining agreement contains a provision for binding arbitration of disputes, this matter

should not be deferred to arbitration for that reason.

~~ANALYSIS~~

In determining whether a party has violated section 3543.5(c) of EERA, the PER3 utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. Stockton Unified School District (1980) PERB Decision No. 143.

Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented prior to the employer notifying the exclusive representative and giving it an opportunity to request negotiations. Walnut Valley Unified School District (1981) PERB Decision No. 160; Grant Joint Unified High School District (1982) PERB Decision No. 196.

In this case you assert that the District has effected two unilateral changes. The first is its failure to accept the evaluation which the committee prepared on Partington. The collective bargaining agreement provides for an Administrative Evaluation (Article 19, section H.7.b) and for Review of Evaluation. (Article 19, section H.7.c.) These provisions provide for a method of review of the peer evaluation conducted earlier, but do not appear to bind the District to accept that evaluation. Thus, it does not appear that Loucks[1] refusal to accept the committee's evaluation of Partington in any way changes a policy embodied in the contract. Even if it could be successfully argued that the District's action does violate the contract provisions, there is no evidence that the action amounts to a change in policy. In Grant Joint Union High School District (1982) PERB Decision No, 10, the Board held that to state a prima facie case of a change in policy the Charging Party must show that the change had "a generalized effect or continuing impact upon the terms and conditions of employment of the bargaining unit members." Id, p. 10. You do not allege that the District has refused to accept a committee evaluation on other occasions, thus a continuing impact is not presented. Further, the matter appears to relate solely to Partington and so a generalized effect is not shown. Thus, a prima facie case of a violation of the EERA through the District's refusal to accept the evaluation has not been demonstrated.

The second alleged unilateral change is Louck's refusal to enforce the 20-deadline on the filing of grievances. The evaluation was filed in the fall of 1985, and yet, he did not

file a grievance until April, 1986. While the contract provides for a 20-day deadline, it also provides that where there is "mutual agreement", the deadline can be extended. There apparently was mutual agreement in this case. It is common practice to waive deadlines in order to facilitate conclusion of a grievance at the lowest possible step in a grievance procedure. Loucks was entitled, as the District's representative, to waive the 20-day deadline for the purpose of resolving the grievance. Furthermore, such waiver typically occurs on a case-by-case basis. Thus, her waiver of the deadline in this instance alone does not demonstrate a change in policy. Grant, supra.

For the reasons explained herein, the allegations contained in the charge do not state a prima facie case of an EERA violation. If you feel that there are any factual inaccuracies in this letter or any additional facts which would require a different conclusion than the one explained above, please amend the charge accordingly. This 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 December 19, 1986, I shall dismiss your charge without leave to amend. If you have any questions on how to' proceed, please call me at (916) 323-8015.

Sincerely,

Jorge A. Leon
Staff Attorney

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