

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



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| MARY ANN TITTLE, |) | |
| Charging Party, |) | Case No. LA-CE-2634 |
| v. |) | PERB Decision No. 686 |
| LOS ANGELES UNIFIED SCHOOL |) | June 24, 1988 |
| DISTRICT, |) | |
| Respondent. |) | |

Appearances; Mary Ann Tittle on her own behalf.
Before Hesse, Chairperson; Craib and Shank, Members.

DECISION

HESSE, Chairperson: Charging party, Mary Ann Tittle, appeals the dismissal of her unfair practice charge against the Los Angeles Unified School District (District), wherein, she alleged violations of the Educational Employment Relations Act (EERA) sections 3543.5(a) and 3543.S(c).¹ Charging party charged that the District committed various acts in 1982 and 1987 that violated EERA.

In her letter of dismissal, attached hereto, the regional attorney dismissed all allegations based on conduct more than six months prior to the date the charge was filed, September 15, 1987. This included all conduct surrounding the settlement agreement entered into by charging party as part of her

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

resignation from the District in 1982. We concur with the regional attorney's analysis and sustain that part of the dismissal on grounds of Untimeliness.

As to the allegation that the District refused to rehire charging party in 1987, the regional attorney found that charging party did not state facts sufficient for a prima facie case. We also concur with that finding. We note further that charging party, as an applicant, has no standing to file an unfair practice charge, as EERA's protection extends only to employees. (See Hacienda La Puente Unified School District (1988) PERB Decision No. 685.) Nor does an individual have standing to assert a refusal to bargain charge against an employer. (See Oxnard School District (1988) PERB Decision No. 667.)

ORDER

For the foregoing reasons, the unfair practice charge in Case No. LA-CE-2634 is hereby DISMISSED in its entirety.

Member Shank joined in this Decision.

Member Craib's concurrence begins on page 3.

Member Craib, concurring: I concur in the dismissal of the charge. However, for the reasons set forth in my dissent in Hacienda La Puente Unified School District (1988) PERB Decision No. 685, I do not agree that the charging party lacks standing to assert that the District unlawfully refused to rehire her in 1987.

PUBLIC EMPLOYMENT RELATIONS BOARD

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



November 13, 1987

Mary Ann Tittle

Re: Mary Ann Tittle v. Los Unified School District:
Charge No. LA-CE-2643

Dear Ms. Tittle ~~LA-CE-26~~

2634

You have filed a charge against the Los Angeles Unified School District (District) in which you allege that the District violated sections 3543.5(a) and (c) of the Educational Employment Relations Act (EERA or Act) and various provisions of the education and labor codes.

I indicated to you in my attached letter dated October 28, 1987, that the charge as written did not state a prima facie case. You were advised that if there were any factual inaccuracies or additional facts that would correct the deficiencies explained in that letter, you should amend the charge accordingly.

I received a First Amended Charge on November 9, 1987, reiterating the allegations that were raised in the original charge. With respect to conduct on the part of the District that occurred within the six-month statute of limitations period, the allegations fail to satisfy the elements of a prima facie violation of section 3543.5(a). Thus, for the reasons set forth in the attached letter, this allegation is dismissed.

The First Amendment Charge adds that the District failed to meet and negotiate in good faith with the exclusive representative in violation of section 3543.5(c). Your assertion that you are the exclusive representative is in error. EERA section 3540.1(e) defines an exclusive representative as an "employee organization recognized or certified as the exclusive negotiating representative of

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certificated or classified employees in an appropriate unit of a public school employer." Since you do not qualify as an exclusive representative under the Act, you have failed to allege a central element of a prima facie violation of section 3543.5(c).

For these reasons and the reasons set forth in my letter dated October 28, 1987, the First Amended Charge in Case No. LA-CE-2634 is dismissed.

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 no later than the last date set for filing (section 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 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

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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,

John Spittler
Acting General Counsel

By -
Carol A. Vendrillo
Staff Attorney

Attachment

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PUBLIC EMPLOYMENT RELATIONS BOARD

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



October 28, 1987

Mary Ann Tittle

Re: Mary Ann Tittle v. Los Angeles Unified School District:
Charge No. LA-CE-2634

Dear Ms. Tittle:

I am in receipt of the above-referenced charge in which you allege that the Los Angeles Unified School District (District) violated sections 3543.5(a) and (c) of the Educational Employment Relations Act (EERA) and various provisions of the education and labor codes.

My investigation has revealed the following facts: After twelve years of employment as a teacher, the District advised you in July 1981 of its intent to pursue a dismissal action. On November 3, 1982, a settlement agreement was reached under which you were permitted to resign. This resignation was signed by you on November 4, 1982. You were represented by an attorney during the dismissal action and the settlement resolution.

On February 24, 1987, you submitted to the District an application for employment. Robert J. Witter, Director of Employed Services, indicated the District's unwillingness to re-employ you in his letter dated March 2, 1987. Again on April 17, 1987, you notified the District of your displeasure with the settlement agreement and your resignation and took issue with the District's reasons for seeking your dismissal. In an attachment to that letter, you declared your resignation "null and void". On May 18, 1987, you submitted a written request to Rita Walters, President of the District Board of Education, entitled "Application for Transfer" expressing your intent to rescind your resignation and to seek "Injury/Illness Leave (Mandatory) WITH FULL PAY, BENEFITS & SERVICE CREDIT."

Howard Friedman, the District's assistant legal advisor, responded to your request on May 28, 1987 and declined to entertain your claims regarding the District's dismissal action or the settlement and resignation of 1982. On July 30, 1987, Walters wrote to you and, citing the settlement and

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resignation, refused to re-consider the accuracy of your evaluations during employment and declined to disturb the District's refusal to re-hire you.

On or about September 15, 1987, you submitted the instant unfair practice charge. Among the 46 allegations raised in the charge, you claim that the District has taken the following action: delayed processing your application for retirement benefits, rejected your application for mandatory leave, barred you from returning to employment, misrepresented your employment history, changed your work assignments, failed to provide written standards or guidelines, assigned students to your overcrowded classrooms, threatened dismissal, failed to provide assistance, humiliated and intimidated you, placed pupils with behavioral problems in your classroom, and other related complaints.

As outlined above, the factual allegations set forth in your charge do not evidence a prima facie violation of the EERA. Section 3541.5(a) precludes the Public Employment Relations Board (PERB) from issuing a charge based on an alleged unfair practice occurring more than six months prior to the filing of the charge. Inasmuch as the events about which you complain occurred in November 1982, nearly five years prior to the filing of this charge, your charge is untimely.

As to events that may have occurred within the statute of limitations period, such as your request for transfer dated May 18, 1987, the charge fails to set forth a cause of action cognizable under the EERA.

To demonstrate a violation of EERA section 3543.5(a) the charging party must show that: (1) the employee exercised rights under the EERA, (2) the employer had knowledge of the exercise of those rights, and (3) the employer imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained or coerced the employees because of the exercise of those rights. Novato Unified School District (1982) PERB Decision No. 210; Carlsbad Unified School District (1979) PERB Decision No. 89; Department of Developmental Services (1982) PERB Decision No. 228-S; California State University (Sacramento) (1982) PERB Decision No. 211-H.

Timing of the employer's adverse action in close temporal proximity to the employee's protected conduct is one factor, although insufficient without more, to demonstrate a violation of the EERA. Moreland Elementary School District (1982) PERB Decision No. 227. The action described above that falls within the statutory period is not in close temporal proximity to any

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alleged protected conduct. Nexus may also be established by one or more of the following factors: (1) the employer's disparate treatment of the employee, (2) the employer's departure from established procedures and standards when dealing with the employee, (3) the employer's inconsistent or contradictory justifications for its actions, (4) the employer's cursory investigation of the employee's misconduct, (5) the employer's failure to offer the employee justification at the time it took action or the offering of exaggerated, vague, or ambiguous reasons, or (6) any other facts which might demonstrate the employer's unlawful motive. Novato Unified School District, supra; North Sacramento School District (1982) PERB Decision No. 264. As presently written, this charge fails to demonstrate any of these factors and therefore does not state a prima facie violation of section 3543.5(a).

Finally, the alleged violations of the education and labor codes do not, under the circumstances of this case, establish that the District has interfered with or denied you rights guaranteed by the EERA. Los

Unified School District

(1986) PERB Decision No. 588.

For these reasons, charge number LA-CE-2634, as presently written, does not state a prima facie case. If you feel that there are any factual inaccuracies in this letter or any additional facts which would correct the deficiencies explained above, please amend the charge accordingly. 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 November 9, 1987, I shall dismiss your charge. If you have any questions on how to proceed, please call me at (415) 557-1350.

Sincerely yours,

Carol A. Vendrillo
Staff Attorney

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