

ORDER

The unfair practice charge in Case No. SA-CE-2421-E is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Chair Neuwald and Member Rystrom joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Office of the General Counsel
1031 18th Street
Sacramento, CA 95811-4124
Telephone: (916) 327-8383
Fax: (916) 327-6377



August 23, 2007

Charles E. Ulmschneider

Re: Charles E. Ulmschneider v. Los Banos Unified School District
Unfair Practice Charge No. SA-CE-2421-E
DISMISSAL LETTER

Dear Mr. Ulmschneider:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on May 10, 2007. Charles E. Ulmschneider alleges that the Los Banos Unified School District (District) violated the Educational Employment Relations Act (EERA)¹ by conducting "unscheduled, unplanned" meetings with him and by denying representation to him in these meetings.

I indicated to you in my attached letter dated July 30, 2007, 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 August 9, 2007, the charge would be dismissed.

On August 15, 2007, I confirmed by the attached letter that the August 9, 2007 deadline was extended to August 22, 2007.

I have not received either an amended charge or a request for withdrawal.² Therefore, I am dismissing the charge based on the facts and reasons contained in my July 30, 2007 letter.

Right to Appeal

Pursuant to PERB Regulations,³ 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

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.

² We spoke by telephone on August 23, 2007, at which time you confirmed that you had not filed an amended charge and requested information about your appeal rights.

³ PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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 during a regular PERB business day. (Regulations 32135(a) and 32130; see also Government Code section 11020(a).) A document is also considered "filed" when received by facsimile transmission before the close of business 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 95811-4124
(916) 322-8231
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.) The document will be considered properly "served" when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also 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.)

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Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

TAMI R. BOGERT
General Counsel

By
Les Chisholm
Division Chief

Attachments

cc: Elizabeth P. Lind

PUBLIC EMPLOYMENT RELATIONS BOARD



Office of the General Counsel
1031 18th Street
Sacramento, CA 95811-4124
Telephone: (916) 327-8383
Fax: (916) 327-6377



August 15, 2007

Charles E. Ulmschneider

Charles E. Ulmschneider
3102 W. Flagstaff Avenue
Visalia, CA 93291

Re: Charles E. Ulmschneider v. Los Banos Unified School District
Unfair Practice Charge No. SA-CE-2421-E

Dear Mr. Ulmschneider:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on May 10, 2007. Charles E. Ulmschneider alleges that the Los Banos Unified School District (District) violated the Educational Employment Relations Act (EERA)¹ by conducting "unscheduled, unplanned" meetings with him and by denying representation to him in these meetings.

I informed you in my letter dated July 30, 2007, 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 August 9, 2007, the charge would be dismissed.

I have not received either an amended charge or a request for withdrawal. However, you telephoned me on August 14, 2007, and left a message stating that did not receive my July 30, 2007 letter until August 14, 2007. You requested additional time in which to review my letter,

This letter confirms my telephone message of today's date extending the August 9 deadline to August 22, 2007.² If I do not receive an amended charge or withdrawal from you before the close of business on **August 22, 2007**, I shall dismiss your charge.

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.

² I am directing this letter to both addresses shown on the charge form, as you did not respond to my earlier request that you confirm your full, complete and correct mailing address.

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If you have any questions, please call me at the above telephone number.

Sincerely,

Les Chisholm
Division Chief

PUBLIC EMPLOYMENT RELATIONS BOARD

Office of the General Counsel
1031 18th Street
Sacramento, CA 95811-4124
Telephone: (916) 327-8383
Fax: (916) 327-6377



July 30, 2007

Charles E. Ulmschneider
P.O. Box 523
Los Banos, CA 93635

Re: Charles E. Ulmschneider v. Los Banos Unified School District
Unfair Practice Charge No. SA-CE-2421-E
WARNING LETTER

Dear Mr. Ulmschneider:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on May 10, 2007. Charles E. Ulmschneider alleges that the Los Banos Unified School District (District) violated the Educational Employment Relations Act (EERA)¹ by conducting “unscheduled, unplanned” meetings with him and by denying representation to him in these meetings.

Mr. Ulmschneider is employed as a teacher by the District, and is assigned to Los Banos High School. The District’s teachers are exclusively represented by the Los Banos Teachers Association (LBTA).

The charge first alleges that, on December 5, 2006, Mr. Ulmschneider was “visited” by Dan Martin, principal at Los Banos High School, that the meeting was unscheduled and unplanned, that Mr. Ulmschneider was not allowed representation, and that Mr. Ulmschneider subsequently received “a series of formal reprimand letters.” On December 15, 2006, Mr. Ulmschneider had a letter of reprimand read to him in the presence of a teacher and LBTA representative, James Orr, and the vice principal, Brett Lee. On December 19, 2007, Mr. Ulmschneider was required to meet with Principal Martin. On January 30, 2007, Principal Martin, Vice Principal Lee, and Mr. Orr entered Mr. Ulmschneider’s classroom. Mr. Ulmschneider asked that Kenneth Garst be his LBTA representative, instead of Mr. Orr, but his request was refused. Letters of reprimand were again read aloud to Mr. Ulmschneider, over his objections.

On February 13, 2007, Vice Principal Lee entered Mr. Ulmschneider’s classroom, during instruction time, to deliver a letter requiring Mr. Ulmschneider to meet with Principal Martin later that morning. Mr. Ulmschneider appeared at the meeting and requested that Mr. Garst represent him instead of Mr. Orr, but his request was refused. A formal letter of reprimand from Shanna Spiva, District personnel director, was read to Mr. Ulmschneider.

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.

On February 26, 2007, another letter of reprimand was read to Mr. Ulmschneider, with Vice Principal Lee and Mr. Orr present. On March 1, 2007, both Dave Waller² and Vice Principal Lee performed classroom visitations in Mr. Ulmschneider's classroom.

The charge further alleges that, on April 23, 2007, Principal Martin again made an unscheduled visit to Mr. Ulmschneider's classroom, to "warn [Mr. Ulmschneider] to turn in things," and that he was again not allowed a representative from the LBTA. On April 24, 2007 and the following week, Mr. Ulmschneider received formal letters of reprimand from Mr. Martin with Vice Principal Brett Lee, Mr. Orr and another teacher (Robert Franklin) present.

Discussion

The charge does not allege a specific section of EERA that is violated by the District's conduct, nor does the charge identify a legal theory under which the allegations should be evaluated. The Board has held that, where a charging party fails to allege that any specific section of the Government Code has been violated, the Board agent, upon a review of the charge, may determine under what section the charge should be analyzed. (Los Angeles County Office of Education (1999) PERB Decision No. 1360.) Here, the facts alleged support analyzing whether the District interfered with Mr. Ulmschneider's rights to representation in violation of EERA section 3543.5(a).

An employee required to meet with the employer is entitled to union representation where (a) the employee requested representation, (b) for an investigatory meeting, (c) which the employee reasonably believed might result in disciplinary action, and (d) the employer denied the request. (National Labor Relations Board v. Weingarten (1975) 420 U.S. 251 (Weingarten); Rio Hondo Community College District (1982) PERB Decision No. 260. See, also, Redwoods Community College District v. Public Employment Relations Board (1984) 159 Cal.App.3d 617; Fremont Union High School District (1983) PERB Decision No. 301; Social Workers' Union, Local 535 v. Alameda County Welfare Department (1974) 11 Cal.3d 382; Civil Service Assn. v. City and County of San Francisco (1978) 22 Cal.3d 552.)

In Rio Hondo Community College District, *supra*, the Board cited with approval Baton Rouge Water Works Company (1979) 246 NLRB 995, which provided:

the right to representation applies to a disciplinary interview, whether labeled as investigatory or not, so long as the interview in question is not merely for the purpose of informing the employee that he or she is being disciplined.

In approving the Weingarten rule, the U.S. Supreme Court noted with approval that the National Labor Relations Board would not apply it to "such run-of-the-mill shop-floor

² It is my understanding from attachments to the charge that Mr. Waller is a Consulting Teacher who makes classroom visits as a part of the Peer Assistance and Review (PAR) program.

conversations as, for example, the giving of instructions or training or needed corrections of work techniques." (Weingarten, quoting Quality Manufacturing Co. (1972) 195 NLRB 197, 199 [79 LRRM 1269, 1271].) Thus, the key inquiry is whether the interview was investigatory and of the type that might lead to disciplinary action. This "is an objective inquiry based upon a reasonable evaluation of all the circumstances, not upon the subjective reaction of the employee." (Alfred M. Lewis, Inc. v. NLRB (9th Cir. 1978) 587 F.2d 403 [99 LRRM 2841, 2845].) The Board has held that there is no right to representation where the purpose of a meeting is simply to deliver notice of the discipline and not to "elicit damaging facts" or possibly modify the discipline. (State of California (California Highway Patrol) (1997) PERB Decision No. 1210-S, adopting decision of administrative law judge; State of California (Department of Transportation) (1994) PERB Decision No. 1049-S.)

Under the above standards, the present charge does not state a prima facie violation of Mr. Ulmschneider's Weingarten rights. There are no facts alleged that demonstrate Mr. Ulmschneider was required to provide information as a part of an investigation at any of the meetings referenced by the charge. As discussed above, a meeting must be an "investigatory meeting" in order for the Weingarten right to representation to be applicable. Further, the charge also demonstrates that Mr. Ulmschneider had an LBTA representative present at many of these meetings, and the Board has held that an employee is not entitled to demand a specific union representative. (State of California (Department of Transportation), supra.) In addition, meetings held to deliver a pre-determined disciplinary action, such as a written letter of reprimand, do not trigger the right to representation. (See, for example, Regents of the University of California (Los Alamos National Laboratory) (2003) PERB Decision No. 1519-H and State of California (Department of California Highway Patrol), supra.)

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 August 9, 2007, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,



Les Chisholm
Division Chief