



STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

LOUIS DE PACE,

Charging Party,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. LA-CE-5127-E

PERB Decision No. 1963

June 18, 2008

Appearance: Louis DePace, on his own behalf.

Before Neuwald, Chair; McKeag and Rystrom, Members.

DECISION

McKEAG, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Louis DePace (DePace) of a Board agent's dismissal (attached) of his unfair practice charge. The unfair practice charge alleged that the Los Angeles Unified School District (LAUSD) violated the Educational Employment Relations Act (EERA)¹ by not providing readable pay stubs to its employees, failing to pay teachers in a timely manner, and not resolving inaccuracies in paychecks. DePace alleged this conduct constituted a violation of EERA but did not identify any specific section. DePace further alleged LAUSD violated Section 31 of the collective bargaining agreement in effect between LAUSD and United Teachers Los Angeles (UTLA), and sections 45038 and 45048 of the Education Code.²

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

²In addition to the instant charge, DePace simultaneously filed a charge against his exclusive representative, alleging the union breached its duty of fair representation in connection with the resolution of the payroll issues. This companion case is entitled Louis DePace v. United Teachers of Los Angeles, Case No. LA-CO-1320-E.

The Board has reviewed the entire record, including the unfair practice charge, LAUSD's position statement, the Board agent's warning and dismissal letters, and DePace's appeal. Based on this review, the Board finds the dismissal of this case was proper and adopts the warning and dismissal letters as a decision of the Board itself, subject to the following discussion regarding the Board's review of the instant appeal.

REQUEST TO REOPEN THE RECORD

Although not expressly stated in his moving documents, DePace essentially asked the Board to reopen the record to permit the late filing of documents for consideration by the Board agent as part of the initial charge. Ironically, the Board recently addressed a similar situation in Regents of the University of California (2008) PERB Order No. Ad-370-H (Regents). As in the instant case, Regents involved a request by the charging party to reopen their case to permit the filing of additional facts for consideration by the Board agent. The Board in Regents held that the request is more appropriately considered an appeal of the dismissal of the charge. Thus, the instant request is properly treated as an appeal.

(Regents; Los Angeles Unified School District (2007) PERB Order No. Ad-368.)³

Treating the request as an appeal, this case was dismissed on December 28, 2007. Pursuant to the 20-day deadline for filing appeals set forth in PERB Regulation 32635(a), plus the five-day extension for service by mail set forth in PERB Regulation 32130(c), the deadline for DePace's appeal was January 22, 2008. Because it was filed on January 22, DePace's appeal was timely filed and, therefore, is properly before the Board.

³PERB Regulation 32635(b) states: "[u]nless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence." (PERB regs. are codified at Cal. Code Regs., tit. 8, sec. 31001, et seq.) We find that DePace has not shown the requisite good cause to present additional documentary evidence on appeal. Accordingly, we have not considered the new evidence submitted by DePace in the instant appeal.

ORDER

The unfair practice charge in Case No. LA-CE-5127-E is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Chairman Neuwald and Member Rystrom joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
3530 Wilshire Blvd., Suite 1435
Los Angeles, CA 90010-2334
Telephone: (213) 736-2907
Fax: (213) 736-4901



December 28, 2007

Louis De Pace

Re: Louis De Pace v. Los Angeles Unified School District
Unfair Practice Charge No. LA-CE-5127-E
DISMISSAL LETTER

Dear Mr. De Pace:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on October 16, 2007. Louis De Pace alleges that the Los Angeles Unified School District (LAUSD) violated the Educational Employment Relations Act (EERA).¹ This dismissal letter addresses one of two unfair practice charges filed by De Pace. The other, case number LA-CO-1320-E is discussed in another dismissal letter of the same date, referencing that case number.

I informed you in my attached letter dated December 13, 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 December 21, 2007, the charge would be dismissed.

I have not received either an amended charge or a request for withdrawal. Therefore, I am dismissing the charge based on the facts and reasons contained in my December 13, 2007 letter.

Right to Appeal

Pursuant to PERB Regulations,² 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.

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

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.)

Final Date

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

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Sincerely,

TAMI R. BOGERT
General Counsel

By _____
Eric J. C. 
Regional Attorney

Attachment

cc: Kathleen E. Collins, Associate General Counsel

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
3530 Wilshire Blvd., Suite 1435
Los Angeles, CA 90010-2334
Telephone: (213) 736-2907
Fax: (213) 736-4901



December 13, 2007

Louis De Pace

Re: Louis De Pace v. Los Angeles Unified School District
Unfair Practice Charge No. LA-CE-5127-E
WARNING LETTER

Dear Mr. De Pace:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on October 16, 2007. Louis De Pace alleges that the Los Angeles Unified School District (LAUSD) violated the Educational Employment Relations Act (EERA).¹ This letter addresses one of two unfair practice charges filed by De Pace. The other, case number LA-CO-1320-E is discussed in another letter of the same date, referencing that case number.

De Pace is a certificated employee of LAUSD. United Teachers of Los Angeles (UTLA) is the exclusive representative of certificated employees at LAUSD. De Pace contends that LAUSD "does not provide a readable pay stub to its employees," fails to pay teachers in a timely manner, and does not resolve inaccuracies in paychecks. De Pace includes as attachments grievances over payroll errors filed by himself and other individuals.

Discussion:

De Pace alleges that LAUSD violated EERA, the Collective Bargaining Agreement (CBA) in effect between LAUSD and UTLA, and sections of the Education Code.

Regarding his allegations of violations of EERA, 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.)

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.

EERA guarantees public employees' right to form, join, and participate in the activities of employee organizations. (EERA, § 3543(a).) It is unlawful for a public school employer to take reprisals against employees for, or otherwise interfere with, the exercise of such rights. (EERA, § 3543.5(a); Simi Valley Unified School District (2004) PERB Decision No. 1714; Sacramento City Unified School District (2001) PERB Decision No. 1461.) In this case, De Pace does not provide sufficient facts to conclude that LAUSD interfered with De Pace's exercise of protected rights or retaliated against him for engaging in such rights. Instead, it appears from the facts provided by the parties that LAUSD's adoption of a new computerized payroll system has led to several errors. De Pace does not establish that LAUSD's errors were made in response to De Pace's protected activity or that the errors interfered with De Pace's exercise of EERA rights. Accordingly, he has not met his burden of establishing a violation of EERA section 3543.5(a).

De Pace next contends that LAUSD's conduct constitutes a violation of Education Code sections 45038 and 45048. "PERB has no jurisdiction to enforce provisions of the Education Code, it [only] has jurisdiction to interpret the Education Code as necessary to carry out its duty to administer EERA." (Whisman Elementary School District (1991) PERB Decision No. 868 (citing San Bernardino City Unified School District (1989) PERB Decision No. 723); see also Desert Community College District (2007) PERB Decision No. 1921, fn. 13.) Education Code section 45038 concerns the frequency of payments to certificated employees by school districts. Education Code section 45048 concerns the time of payment for certificated employees by school districts. PERB does not have jurisdiction to determine whether LAUSD or UTLA violated these sections and De Pace does not explain how interpretation of these sections implicates LAUSD's responsibilities to De Pace under EERA. Therefore, De Pace does not demonstrate how these allegations establish that a violation of EERA occurred.

De Pace also alleges that LAUSD's conduct violated section 31 of the CBA. EERA section 3541.5(b) states:

The board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of such an agreement that would not also constitute an unfair practice under this chapter.

As stated above, De Pace does not establish that LAUSD's conduct violated EERA. Accordingly, PERB is without jurisdiction to address this allegation.

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

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amended charge or withdrawal from you before December 21, 2007, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Erj~~e~~J. Cu
Regional Attorney

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