STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

TONY PETRICH.	)	
	)	
Charging Party,	)	Case No. LA-CE-2188
	)	
v.	)	Request for Reconsideration
	)	PERB Decision No. 562
RIVERSIDE UNIFIED SCHOOL DISTRICT.	)	
	)	PERB Decision No. 562a
Respondent.	)	
	)	May 16, 1986

Appearance: Tony Petrich, on his own behalf.

Before Hesse, Chairperson; Morgenstern. Burt. Porter and Craib. Members.

DECISION

CRAIB. Member: Tony Petrich requests reconsideration of Decision No. 562 issued by the Public Employment Relations Board (PERB or Board) on January 24. 1986. The request is based on the contention that Decision No. 562 contains errors of fact and law. For the reasons which follow, we grant the request.

PROCEDURAL HISTORY

Tony Petrich filed an unfair practice charge on May 22, 1985 against the Riverside Unified School District (District). Over the following several weeks, four amendments to the charge were submitted, each adding new and further allegations of unlawful conduct on the part of the District.

The regional attorney reviewed these submissions and, as

set forth in her warning letter of August 16, 1985 (attached hereto), found a total of twenty-one allegations of unlawful conduct. The warning letter concluded by stating that a complaint would issue on eight of the allegations. The remainder of the allegations, said the letter, failed to state a prima facie case; unless additional supporting material was submitted or the allegations withdrawn by August 26, 1985. those allegations would be dismissed.

In response to the warning letter, Petrich elected not to supplement or withdraw his charge but, instead, filed an "Appeal of Dismissal" with the Board itself even before receiving the notice of dismissal which the regional attorney issued on August 27. 1985. When this document was received by the Board, it was reviewed by the executive director.

Upon review of the record, the executive director concluded that Petrich was attempting to appeal the warning letter and that PERB Regulations and procedures made no provision for such an appeal. Only an appeal of the notice of dismissal is permitted. The executive director informed Petrich of these conclusions by letter dated August 30, 1985. The letter also stated that the notice of dismissal had issued on August 27 and thus the last day to file a valid appeal of the dismissal would be September 16. 1985.

On September 6, the Board received a filing from Petrich, again labeled "Appeal of a Dismissal." This document raised none of the issues which Petrich had raised in his August 27

appeal of the warning letter. Instead, it raised just two issues, neither of which had been mentioned in Petrich's first filing.

On January 24. 1986, the Board issued Decision No. 562. In his valid appeal of September 6, Petrich had not indicated in any way that he intended to incorporate into the valid appeal any of the exceptions or arguments raised in his rejected appeal of August 27. The Board therefore reviewed only the two exceptions set forth in the latter appeal. The first of those concerned the regional attorney's dismissal of the allegation that the District violated the Educational Employment Relations Act (EERA or Act)[1] by locking the entry doors to its personnel office during the noontime hour. The second exception concerned the dismissal of his allegation that the District violated the EERA by issuing an evaluation of Petrich which expressed critical findings and which was accompanied by supporting attachments taken from his personnel file. The Board concluded after its own review of the charge that the regional attorney had acted correctly in refusing to issue a complaint on either of these allegations.

THE REQUEST FOR RECONSIDERATION

As a preliminary matter to his request for reconsideration, Petrich asks that the three Board members who rendered Decision

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

No. 562 disqualify themselves pursuant to PERB Regulation 32155.[2] That request has been denied by letter issued April 1, 1986.

Petrich asserts that Decision No. 562 contains errors of law and fact with regard to the two exceptions therein reviewed. His arguments, however, are primarily reassertions of arguments presented previously and therefore provide no ground for granting reconsideration. Rio Hondo Community College District (1983) PERB Decision No. 279a. After a careful review of the instant request, together with the record in this case as a whole, we find no prejudicial errors in Decision No. 562 and on that basis deny the request for reconsideration of those matters.

Finally. Petrich asserts that the Board erred in failing to consider and render a decision on his attempted appeal of August 27. 1985. While the Board's executive director rejected that filing as noted above, we recognize that Petrich is representing himself in these proceedings and is untrained in legal matters; he may. therefore, have failed to understand the import of the executive director's letter. We have concluded that, while neither the Board nor its agents have committed any error in this matter, the purposes of the Act will best be

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2pERB regulations are codified at California Administrative Code, title 8, section 31001 et seq.

served in this instance by considering and deciding the issues raised in the document served by Petrich on August 27.

DISCUSSION

As noted above, the regional attorney who investigated Petrich's charge identified and numbered 21 individual allegations of unlawful conduct on the part of the District. The premature appeal filed by Petrich contests the dismissal of 11 of these.

In allegation 2. Petrich asserts that the District violated the contractual grievance procedure when it failed to hold a level II conference on a grievance he filed on February 7, 1985. This action, maintains Petrich, evidences both a unilateral change in the District's grievance policy and an act of reprisal for protected activities. The regional attorney received information during her investigation indicating that a level II conference was in fact held. Concluding that Petrich's factual claim was false, she dismissed the allegation.

We find that the regional attorney erred in dismissing this allegation. In San Juan Unified School District (1977) EERB Decision No. 12.[3] the Board set out the principle that facts alleged in a charge are presumed true for purposes of pre-hearing charge processing. Here, Petrich has alleged: (1) that the existing grievance policy, as established by

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3prior to January 1. 1978. PERB was known as the Educational Employment Relations Board.

contract, provides that a conference shall be held for level II grievances; and (2) that the District has indicated through its action that it will no longer hold such conferences. If true, these allegations establish a prima facie case of unilateral change in negotiable policy. The truth or falsehood of these allegations is not to be determined by an ex parte investigation but by a hearing in which both parties may have a full and fair opportunity to present evidence in support of their positions. We note, however, that this allegation fails on its face to contain facts supporting the claim that the District's alleged failure to hold the conference was an act of reprisal. Our order for issuance of a complaint on this allegation, therefore, will be limited to the unilateral change aspect.

In allegation 3, Petrich asserts that he filed another grievance on March 8. 1985. Again, says Petrich, the District refused to follow the contractual grievance procedure. In this instance, he claims, the District bypassed the level I procedures and routed his grievance directly to the Assistant Superintendent for Personnel, who held a level II proceeding. Upon investigation, the regional attorney received information that the District has on previous occasions bypassed the first level of the grievance procedure. The regional attorney dismissed the allegation based on her conclusion that the District's action was not inconsistent with existing policy as she found it to be.

Again, it appears that the investigation has framed a dispute as to the true existing grievance policy. In discrediting Petrich's version of that policy, the regional attorney again ran afoul of the San Juan rule. We will therefore reverse the dismissal of this allegation.

In allegation 4, Petrich asserts that he was subjected to reprisal and unilateral change when the District denied his after-the-fact request for personal necessity leave and docked him six and one-half hours pay. He alleges that he took off the entire workday of March 7, 1985, in order to attend a PERB informal conference held that day at 3:30 p.m. in Riverside. He claims disparate treatment because two representatives of the California School Employees Association (CSEA) were given leave time to attend the conference and, in 1982, the District had granted Petrich one day of personal necessity leave to attend an informal conference.

Upon investigating the charge, the regional attorney learned that the CSEA representatives had only been granted leave from 2:45 p.m. to the end of the day. and the full day of leave was granted in 1982 because the conference was held not at 3:30 in Riverside but at noon in downtown Los Angeles. Petrich was granted the same leave time as the CSEA representatives, but was docked for the earlier hours of the day taken without permission.

In her warning letter of August 16. the regional attorney informed Petrich that she had received this supplementary information. The letter stated that if Petrich felt there were facts or legal argument which would support a different conclusion, he could submit that input by filing an amended charge. Petrich submitted nothing further to the regional attorney.

The information obtained by the regional attorney in this instance does not contradict the facts pled by Petrich in his charge; rather, it expands upon the factual picture. Thus, the regional attorney did not violate the San Juan rule in crediting this information. Because of this, and because Petrich supplied no further pleading on this matter, the regional attorney could properly rely on the newly-obtained information. Taken as a whole, the facts presented fail to establish a prima facie case of either reprisal or unilateral change. The dismissal of this allegation is therefore affirmed.

In allegation 5. Petrich asserts that by docking him six and one-half hours pay without prior notice, the District violated contract section 19.1, which requires that the District first give him advance notice and the opportunity to request a hearing. However, in a telephone conversation with the regional attorney, Petrich admitted that he had in fact received the notice. He was advised in the warning letter of the regional attorney's intention to rely on this admission but

did not contest it and does not contest it on appeal. We therefore affirm this dismissal.

In allegations 6 and 13. Petrich alleges that on or about March 21. and again on May 29 and 31. 1985, his briefcase, which was locked in the trunk of his car. was opened by unauthorized persons who were representatives of the District. Upon inquiry by the regional attorney. Petrich revealed that he has no evidence to prove this assertion.

The burden of proving a charge is upon the charging party. Where, as here, the charging party has no evidence to prove his allegation, no purpose is served by issuing a complaint. See Los Angeles Unified School District (1984) PERB Decision No. 473.

In allegation 7, Petrich alleges that North School Plant Supervisor Hodnett removed the master key from Petrich's set of work keys and replaced it with a "section" key which gives him access to locked doors only in a limited area. Petrich argues that this was an act of reprisal.

In order to establish a prima facie case of reprisal, a charging party must allege facts which support an inference that an employee's exercise of protected rights was a motivating factor in the employer's decision to take adverse personnel action against that employee. In the instant charge, Petrich has alleged that he engaged in protected activity, consisting primarily of filing grievances with his employer and

filing unfair practice charges with this agency. He has also alleged that the employer took action which was at least arguably adverse to him. However, no facts are alleged which raise an inference that the protected activity was a causative factor in the employer's decision to take that action. The mere fact that a disciplined employee has been active in exercising protected rights does not, without more, raise the inference that the discipline was an act of reprisal. The dismissal of this allegation is therefore affirmed.

In allegation 11, Petrich asserts that his April 1985 paycheck reflected a dock of a half day of wages because his physician's verification of illness for March 25, 1985 was found unsatisfactory. The current CSEA-District contract provides at Article XIX that the District may dock pay for an absence without authority. It also provides that, prior to docking pay, the employee is entitled to notice and the right to an informal hearing with the immediate supervisor. Petrich alleges that he was denied the right to notice and the opportunity to request a hearing. He argues that the District's conduct evidences a unilateral change in pay-docking rules and in disciplinary procedure.

Upon investigation, the regional attorney learned that Petrich has an extensive history of excessive and undocumented sick leave. She concluded, therefore, that the District acted within its contractual authority when, in February 1985. it

notified Petrich that all future sick leave absences must be documented by a physician's verification. She learned further that on March 25. 1985 Petrich had left work for a doctor's appointment and had failed to return without explanation, thereby missing four and one-half hours of work. This was the cause of the April pay dock. The regional attorney went on to review the contract language at Article XIX and concluded that the contractual right to prior notice and an opportunity to request a hearing do not apply to the circumstances Petrich raises.

Neither the charge nor the investigation present facts which, if true, would show that the District has unilaterally changed its policy on sick leave verification requirements. Petrich has not alleged that he presented verification of a kind which, in the past, has been accepted as adequate. Rather, he only asserts that the verification he submitted was found unsatisfactory by the District. We therefore affirm the dismissal of the allegation that the District violated the EERA when it rejected Petrich's proffered verification of his sick leave claim for March 25. 1985.

On our own review of the contract provision on prior notice of disciplinary action, however, we find it not at all certain that the regional attorney's interpretation of the contract is correct. Article XIX is expressly entitled "Disciplinary Action and Dismissal Procedures" and specifically provides for

pay docking, yet the regional attorney concluded that Petrich's dock was not a form of discipline and thus does not give rise to the rights Petrich claims. In light of this uncertainty, it appears that the regional attorney violated the San Juan rule by discrediting the contract interpretation proffered in the charge. We will therefore order that a complaint should issue on this unilateral change allegation.

In allegation 14. Petrich asserts that his May 1985 pay warrant reflected a dock of one and one-half days for April 22 and 23. 1985. He alleges that he submitted a physician's verification certificate which covers the days of April 22. 23. and 25. Petrich says he inquired of plant supervisor Hodnett about the matter and Hodnett responded that he had not received any such verification.

Upon investigation, the regional attorney received information from the District that it has no record in its files of the physician's verification certificate in question. The District does not deny that Petrich may have submitted such a certificate, but only that it did not receive it.

The facts here presented fail to show that the District has embarked on a new policy of denying sick leave to employees who have submitted verification. As the regional attorney concluded. Petrich may well have had a basis for filing a grievance (although he did not file one), but the facts presented fail to evidence a change in policy having "a

generalized effect or continuing impact upon the terms and conditions of employment." Grant Joint Union High School District (1982) PERB Decision No. 196. Petrich also argues that the District's course of conduct was an act of reprisal. However, no facts are alleged which would show a nexus between this conduct and any protected activity on Petrich's part. We therefore affirm the dismissal of this allegation.

In allegation 19. Petrich asserts that the District changed his assigned work hours for the period June 21 through August 30, 1985 from 7:00 a.m. until 4:00 p.m. to 6:00 a.m. until 2:30 p.m., with one-half hour for lunch instead of one hour. He states that, even though the District may have changed the summer work hours in this manner in years past, it has more recently agreed that, once an employee's work hours are established, any change in those hours is negotiable. Upon investigation, the regional attorney received information that the District had in fact changed the summer hours of gardeners in this manner for many years past. She concluded that this practice established the applicable policy and that the District's alleged action therefore did not appear to deviate from that policy.

Here, the regional attorney has again run afoul of the San Juan rule. Petrich has specifically alleged that current policy obligates the District to negotiate prior to changing an

employee's hours, notwithstanding past practice. This factual allegation must be deemed true for purposes of charge processing. We therefore will order that a complaint should issue on this matter.

In allegation 20. Petrich asserts that the District made a unilateral change by switching the night shift employees to the day shift and reducing their lunch hour by one-half hour. Petrich has stated in his charge that he is a day shift employee. As such, it appears that he was unaffected by the change in hours of night shift employees. The Board has previously held that an individual employee has standing under the Act to bring a charge alleging a unilateral change in negotiable working conditions. South San Francisco Unified School District (1980) PERB Decision No. 112. However, nowhere in PERB's decisions, nor in California law generally, has standing been found for a party who is entirely unaffected by the complained-of conduct. We decline to adopt such a rule. We therefore affirm the dismissal of allegation 20.

ORDER

Upon the entire record in this case, including the request for reconsideration of PERB Decision No. 562 filed by Tony Petrich, the Public Employment Relations Board ORDERS that this case be REMANDED to the general counsel with directions to issue a complaint consistent with the foregoing Decision.

Members Morgenstern and Burt joined in this Decision.

Member Porter's concurrence and dissent begins on p. 16, Chairperson Hesse joined in his concurrence and dissent.

Porter, Member, concurring and dissenting: I concur in the majority's denial of part of Petrich's request for reconsideration, but respectfully dissent from the remainder of the majority opinion's decision to grant reconsideration. As to the merits of the reconsideration itself, I concur in those portions of the majority decision that affirm the regional attorney's dismissal, but dissent from those portions that would issue a complaint.

Reconsideration

I concur in the majority's denial of reconsideration as to a portion of Charging Party's request. However, I would deny the remainder of the request on the ground Petrich has failed to bring his request within the requirements of Regulation 32410(a). That regulation states in relevant part:

> The grounds for requesting reconsideration are limited to claims that the decision of the Board itself contains prejudicial errors of fact, or newly discovered evidence or law which was not previously available and could not have been discovered with the exercise of reasonable diligence.

Regarding Petrich's claim that the Board failed to take note of his initial appeal of the warning letter, Petrich was clearly notified by the Executive Director that our regulations do not permit an appeal of a warning letter. Apparently in response to this letter, Petrich filed his appeal that was considered by the Board. This appeal failed to mention or in any way reference or incorporate the premature appeal and, on

that basis, the Board disregarded the premature appeal. I see no reason now to reconsider this decision. The fact that Petrich is representing himself does not persuade me the Board should apply a different standard to him, especially since he is quite experienced in PERB proceedings, and was given full notice and adequate opportunity to correct the deficiency.

Specific Allegations

The majority opinion reverses the regional attorney's dismissal of allegations 2, 3, 11 and 19 insofar as they allege unlawful unilateral changes. Allegations 2, 3 and 11 assert that the District violated the contract in various ways. I would affirm the regional attorney's dismissal of those allegations, for the same reasons as I discussed in my concurrence and dissent in Riverside Unified School District (1986) PERB Decision No. 571, namely, that they fail to allege a change in policy that has a generalized effect and continuing impact, Grant Joint Union High School District (1982) PERB Decision No. 196, and that an individual employee lacks standing to assert a unilateral change in policy based on the collective bargaining agreement.

Regarding allegation 19, I disagree that the regional attorney made a factual resolution that is contrary to San Juan Unified School District (1977) EERB Decision No. 12. In his charge, Petrich asserts on pages 2 and 3 of the Fourth Amended Charge:

> Assuming arguendo, that the employer has effectuated implementation of alleged "past practice": 1) said practice does not apply to Charging Party because the employer agreed that once an employee's work hours have been established, a change is negotiable. . . .

Thus, it appears that Petrich recognized the employer's past practice in his charges, but claimed he was exempted from that past practice based on the employer's agreement to negotiate a change in his work hours. This charge fails to meet the Grant standard, because it is clear there is no generalized effect in the employer's alleged conduct. The regional attorney's investigation merely confirmed what Petrich included in his charges regarding the past practice, and therefore, there was no disputed fact which she resolved. Further, since Petrich failed to allege any further facts regarding the "agreement," his allegation cannot be read to mean that this "agreement" changed the existing practice. (See the discussion in my concurrence and dissent in Riverside Unified School District, supra, regarding the same allegation of a District "agreement" to negotiate a change in schedule.)

For the foregoing reasons, I would deny in toto Charging Party's request for reconsideration, or alternatively, I would summarily affirm the regional attorney's dismissal of the allegations before us.

Chairperson Hesse joined in this Concurrence and Dissent.

STATE OF CALIFORNIA GEORGE DEUKMEJIAN, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD
LOS ANGELES REGIONAL OFFICE
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August 16, 1985

Tony Petrich

Re: LA-CE-2188, Tony Petrich v. Riverside Unified School District

Dear Mr. Petrich:

The above-referenced charge filed on May 22, 1985 and four amended charges filed thereafter allege that the Riverside Unified School District discriminated against Mr. Petrich and acted unilaterally i violation of Government Code section 3543.5(a), (b), and (c) of the Educational Employment Relations Act (EERA).

The charge filed on May 22, 1985 alleges:

1. A March 4, 1985 memorandum to Mr. Petrich from District Superintendent Frank C. Tucker memorialized an incident on the same date whereby Mr. Petrich entered Mr. Tucker's office when neither he nor his secretary were present. The memorandum directed Mr. Petrich not to enter Mr. Tucker's office unless he was present. See paragraphs 6 through 9 and exhibits 1 through 4 of the charge.

2. Mr. Tucker failed to hold a level II conference for a February 7, 1985 grievance filed by Mr. Petrich in violation of the District's obligation set forth in section 18.2.2 of the 1982-85 agreement between the District and Mr. Petrich's exclusive representative. See paragraphs 6, 7 and 10 and exhibits 1 and 5 of the charge.

3. On March 8, 1985, Mr. Petrich filed a grievance regarding Mr. Tucker's March 4, 1985 memorandum mentioned in paragraph 1 above. In violation of subsection 18.2.1 of

the negotiated contract, North High School Plant Supervisor Hodnett advised Mr. Petrich that he would not hold a level I conference. Instead, the grievance was submitted to North High School Principal Douglas Wolf who in turn submitted it to Mr. Tucker who held the level I conference himself on March 21, 1985. Mr. Tucker's reply was drafted in the space on the form reserved for the immediate supervisor's response and Mr. Tucker changed the form to read, "Grievance Form-Level II". See paragraphs 11 through 14 and exhibits 3, 6 and 7 of the charge.

4. On March 15, 1985, in a "derogatory communication" from Mr. Tucker placed in Mr. Petrich's personnel file, the District denied Mr. Petrich personal necessity leave for March 7, 1985 when he attended a PE?3 informal conference concerning unfair practice charge LA-CE-2097. For a prior similar occasion the District had approved personal necessity leave with pay. See paragraphs 17, 18 and 32 and exhibits 8 and 9 of the charge.

5. When Mr. Petrich attended the March 7, 1985 PERB informal conference described in paragraph 4 above, the District docked him 6-1/2 hours pay without previous notice which would have afforded him the right to request a hearing as provided in section 19.1 of the negotiated contract. See paragraphs 17, 18, 31, 32, 33 and 34 and exhibits 7, 8 and 9 of the charge.

6. Beginning on or about March 21, 1985, Mr. Petrich's brief case, which was locked and secured in the trunk of his car, was opened on more than one occasion by unauthorized persons. See paragraphs 19, 23, 26, 29, 32 and 33 of the charge.

7. On or about March 28, 1985, Mr. Hodnett, absent prior notification or any justification, removed the master key from Mr. Petrich's district ring set and

replaced it with a new "section" key which denies his free access to and from one of his assigned work areas. See paragraphs 21, 32 and 33 of the charge and paragraph 9 of the first amended charge.

8. On March 28, 1985 Mr. Petrich received a "derogatory communication" from Mr. Hodnett, also placed in his personnel file, stating that Mr. Petrich failed to obey directions because he replaced a broken light cover in the Attendance Office in direct contradiction to instructions and failed to clean the girls' restroom. See paragraphs 22, 32 and 33 and exhibit 10 of the charge.

9. On April 2, 1985, Mr. Petrich received a "derogatory memorandum" from Mr. Hodnett, also placed in his personnel file, stating that Mr. Petrich failed to properly clean the girls' restroom and left it unlocked. See paragraphs 25, 32 and 33 and exhibit 11 of the charge.

10. On April 26, 1985 Mr. Petrich received a "derogatory memorandum", also placed in his personnel file, from North High School Vice-Principal Richard Moshier concerning Mr. Petrich's "insubordination" in refusing to comply with parking regulations at the high school. This document was allegedly drafted and placed in the personnel file because Mr. Petrich requested representation at a meeting held on the same date to discuss the issue. See paragraphs 26, 28, 29, 32 and 33 and exhibit 12 of the charge.

11. On April 30, 1985, Mr. Petrich noticed that his April pay warrant reflected a dock for 1/2 day without a hearing because his physician's verification of illness for March 25, 1985 was found unsatisfactory. See paragraphs 30, 31, 32, 33 and 34 and exhibits 13 and 14 of the charge.

12. When questioned regarding the April pay dock described in paragraph 11 above, Mr. Hodnett presented Mr. Petrich with a

> "derogatory memorandum" dated April 29, 1985, also placed in his personnel file, containing a list of Mr. Petrich's sick leaves and other absences since his reassignment to North High School on February 25, 1985, noting the absence of physician verifications, and referencing occasions when the girls' restroom was not clean. See paragraphs 30, 31, 32, 33 and 34 and exhibits 13 and 14 of the charge.

The first amended charge filed on June 10, 1985 alleges:

> 13. With reference to paragraph 6 above, on May 29 and 31, 1985 Mr. Petrich found fresh pry marks on the trunk rail of his car and determined that someone had searched his briefcase. See paragraphs 4 and 10 of the first amended charge.
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> 14. On May 31, 1985, Mr. Petrich noted that Mr. Hodnett had docked his May pay warrant 1-1/2 days' pay for April 22 and 23, 1985 although Mr. Petrich had submitted a physician's certificate of illness. See paragraphs 5, 10 and 11 and exhibit 1 of the first amended charge, and exhibit 14 of the charge.
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> 15. The District proposed a 30-workday suspension against Mr. Petrich. See paragraphs 7 and 8 of the charge.
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> 16. On June 7, 1985, Mr. Petrich received a "derogatory communication" from Mr. Hodnett, also placed in his personnel file, stating that Mr. Petrich was late to work on various occasions, failed to follow his assigned work schedule and otherwise did not perform his duties. See paragraphs 9 and 10 and exhibit 2 of the first amended charge.

The second amended charge filed on June 18, 1985 alleges:

> 17. On June 14, 1985, Mr. Petrich received a "derogatory communication" dated June 12, 1985 from Principal Wolf, also placed in his personnel file, alleging that on May 30,

1985 Mr. Petrich had a student purchase a package of cigarettes for him. Mr. Petrich was directed not to send students off campus on errands in the future. See paragraphs 3 and 4 and exhibit 1 of the second amended charge.

The third amended charge filed on June 24, 1985 alleges:

18. On June 20, 1985, Mr. Petrich received a "derogatory communication" dated June 19, 1985 from Mr. Wolf, also placed in his personnel file, stating that Mr. Petrich had made various offensive statements to a teacher in several conversations. The memo asked Mr. Petrich to refrain from further attentions in the future. See paragraphs 5 through 7 and exhibit 1 of the third amended charge.

The fourth amended charge filed on July 5, 1985 alleges:

19. On June 19, 1985, Mr. Petrich received written notification from Mr. Hodnett that effective June 21 through August 30, 1985, his work hours would be changed from 7:00 a.m. - 3:30 p.m. to 6:00 a.m. - 2:30 p.m., and his lunch hour would be 1/2 hour instead of one hour. See paragraphs 3, 7 and 8 and exhibit 1 of the fourth amended charge.

20. The District changed the entire night shift, with the exception of two individuals, to a day shift and reduced their lunch hour to 1/2 hour. See paragraphs 3, 7 and 8 and exhibit 1 of the fourth amended charge.

21. On June 26, 1985, Mr. Petrich attended an evaluation conference wherein he was represented by his exclusive representative. He was presented with an evaluation form which specified many factors which were "unsatisfactory" or "improvement needed". Mr. Hodnett also indicated on the form, "I believe if Tony is to avoid termination he must come to 95% of the

> workdays, work diligently for a full shift each day, accept direction cheerfully, and do quality work." Attached to the evaluation were all of the "derogatory materials" given Mr. Petrich between March 28 and June 19, 1985. Also attached was a "derogatory written statement" drafted by another employee which Mr. Petrich alleges is improperly attached to the evaluation. See paragraphs 6 through 9 and exhibit 2 of the fourth amended charge.

My investigation revealed the following facts regarding the above allegations. Mr. Petrich has been employed by the District for approximately seventeen years. He has had a history of personnel issues with the District since 1982. In 1982 Mr. Petrich filed five grievances pursuant to the grievance procedure negotiated between the District and his exclusive representative, the California School Employees Association (CSEA).

In 1984 Mr. Petrich filed two grievances regarding the placement of alleged derogatory materials in his personnel file. He also filed two unfair practice charges against the District. The first was charge LA-CE-2097 filed on November 27, 1984. The second was charge LA-CE-2112 filed on December 26, 1984. Both charges resulted in partial dismissals and partial complaints issued respectively on January 15 and April 2, 1985. No decision has yet issued after the joint formal hearing was held in July 1985.

In 1985 Mr. Petrich filed numerous grievances and unfair practice charges as summarized here and in the attached "Summary of Petrich Cases":

> 1. Charge LA-CE-2114 filed on January 2, 1985 resulted in a dismissal affirmed by the Board in Petrich v. Riverside Unified School District (1985) PERB Decision No. 511.
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> 2. Charge LA-CE-2129 filed on February 4, 1985 resulted in a dismissal affirmed by the Board in Petrich v. Riverside Unified School District (1985) PERB Decision No. 512.
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> 3. Charge LA-CE-2130 filed on February 4, 1985 resulted in a partial complaint and a partial dismissal affirmed by the Board in Petrich v. Riverside Unified School District (1985) PERB Decision No. 513.

4. Charge LA-CE-2131 filed on February 4, 1985 resulted in a dismissal presently on appeal to the Board.

5. Charge LA-CE-2134 filed on February 11, 1985 resulted in a partial complaint and a partial dismissal presently on appeal to the Board.

6. Charge LA-CE-2143 filed on March 1, 1985 resulted in a partial complaint and a partial dismissal presently on appeal to the Board.

Based on the following facts and reasons, certain of the paragraphs alleged in the instant charge and four amended charges will be dismissed absent amendments which would cure the defects. A complaint will issue on the allegations referred to in paragraphs 1, 8, 9, 10, 12, 16, 17 and 18 above.

2. The charge alleges that the District failed to hold a level II conference for a February 7, 1985 grievance filed by Mr. Petrich in violation of the District's obligation set forth in section 18.2.2 of the collective bargaining agreement. In fact the conference was held at the District office at 3:00 p.m. on March 7, 1985, just before the PERB informal conference held at 3:30 p.m. on the same date described in paragraph 4, infra. Present were Mr. Tucker representing the District and CSEA representatives Corona and Prince. Mr. Petrich did not appear.

No violation of the EERA exists here because the District conformed to the negotiated contract. It may be that Mr. Petrich did not receive notice of the level II conference although his CSEA representatives did. If there was such a mistake, there has been no showing of a policy change having a "generalized effect or continuing impact upon the terms and conditions of employment" as required by Grant Joint Union High School District (1982) PERB Decision No. 196. Therefore this allegation of the charge will be dismissed.

3. It is undisputed that Mr. Petrich's March 8, 1985 grievance concerning the memorandum directing him not to enter Mr. Tucker's closed office was not processed at level I of the grievance procedure, but instead was forwarded directly to Mr. Tucker for response. While the contract does not expressly allow this the District has records indicating a past practice, in which CSEA has

acquiesced, of bypassing the first step of the grievance procedure when the lower-level supervisors would be unable to effectuate a remedy. In the present case both Plant Supervisor Hodnett and Principal Wolf had no knowledge of the office incident nor any ability to remedy the grievance.

Unless Mr. Petrich can produce facts demonstrating a different past practice and a deviation from that practice, this aspect of the charge will be dismissed since no unilateral change has been demonstrated.

4. The District denied Mr. Petrich 8 hours' personal necessity leave for March 7, 1985 when he attended a PERB informal conference concerning unfair practice charge LA-CE-2097. It docked him 6-1/2 hours' pay. Mr. Petrich claims that the District had previously allowed him personal necessity leave to attend an unfair practice informal conference and that he received disparate treatment as compared to his CSEA representatives who also attended the March 7 informal conference.

On March 7, 1985, the informal conference was held at 3:30 p.m. in Riverside. Mr. Petrich took the entire day off from work without permission. When he claimed personal necessity leave for the occasion, the District allowed him one hour released time from **2:30** to 3:30 p.m. for clean-up and travel time, and from 3:30 p.m. to the end of his shift at 4:00 p.m. for the informal conference. Mr. Petrich was docked for the remainder of the time taken off.

Also present at the informal conference were CSEA representatives Corona and Prince. The District records show that Mr. Corona left work at 2:50 p.m. and Mr. Prince at 2:45 p.m. to attend a 3:00 p.m. level II grievance hearing concerning Mr. Petrich's February 7, 1985 grievance referenced in paragraph 2 on page 1 of this letter. Thereafter, they attended the 3:30 p.m. informal conference. Both received released time from 2:50 p.m. or 2:45 p.m. until the end of their work day.

The previous PERB informal conference to which Mr. Petrich refers in case LA-CO-230 was held midday on June 15, 1982 at the PERB regional office in downtown Los Angeles, thereby necessitating an entire day off from work. Under section 13.5.2(8) of the negotiated contract, personal necessity leave is allowed at the "discretion of the District" with certain caveats which do not apply to the instant situation.

The foregoing facts do not show a change in the District's policy in release time or disparate treatment of Mr. Petrich as compared to

his CSEA representatives. In fact they show a consistent policy and practice. Because there has been no unilateral change, this aspect of the charge will be dismissed.

5. The charge alleges that the District docked Mr. Petrich 6-1/2 hours' pay for the March 7, 1985 informal conference described above without previous notice which would have afforded him the right to request a hearing as provided in section 19.1 of the negotiated contract. However, on July 12, 1984, Mr. Petrich stated in a telephone conversation with the Regional Attorney that he did in fact receive the notice, request a hearing, and attend a hearing held on March 22, 1985. Therefore, this aspect of the charge will be dismissed.

6 and 13. Mr. Petrich alleges that his brief case, which was locked and secured in the trunk of his car, was opened on more than one occasion by unauthorized persons. He assumes those persons were representatives of the District. He has no evidence tending to show that a representative of the District left pry marks on the trunk rail of his car or searched his brief case other than the facts recited in paragraphs 19, 23, 26 and 29 of the charge and paragraph 4 of the first amended charge. Since these factual allegations are insufficient to prove the matter, these paragraphs of the charge will be dismissed.

7. The charge alleges that Mr. Hodnett, absent prior notification or any justification, removed the master key from Mr. Petrich's ring set and replaced it with a "section" key which denies his free access to and from the room where he stores his tools.

The District states that only four of 15 custodian/gardeners carry a master key. These are the Night Custodian, Saturday Custodian, Lead Custodian, and the Custodian assigned to supply all rooms with paper and other products. The Night Custodian and Saturday Custodian work alone. The Lead and Supply Custodian may be located by the other employees if they have need to enter rooms outside their assigned section.

Mr. Petrich was originally given a master key because he was storing his tools in an area where his section key did not work. However, according to the District, he was using the master key to enter areas he was not normally assigned to do work he selected and preferred to do while he neglected his assigned duties. As a result he was asked to return the master key and move his tools to an area where the section key would work. He refused to do this.

The facts show no evidence of reprisal against Mr. Petrich because he has not been treated differently than any other employee similarly situated. The four employees who have master keys all function in a special capacity. Additionally, assignment of master keys is not a matter within the scope of bargaining and does not affect Mr. Petrich's working conditions. The District retains the managerial prerogative to assign Mr. Petrich work in the areas it chooses and to give him access to those areas. The withdrawal of the master key was not an action adverse to Mr. Petrich because it did not affect his working conditions and was not a disciplinary action. For these reasons, this aspect of the charge does not state a prima facie case and will be dismissed.

11. The charge alleges that on April 30, 1985 Mr. Petrich found that his April pay warrant reflected a dock of 1/2 day because his physician's verification of illness for March 25, 1985 was found unsatisfactory. The District had notified Mr. Petrich in February 1985 that all future sick leave absences must be substantiated by a physician's verification due to excessive use of sick leave in the past. This procedure is authorized in the District's discretion by section 13.3.4 of the negotiated contract. The District states that two other current employees are also required to provide verification of sick leave and that other employees have been so required in the past.

Mr. Petrich was absent on Friday, March 22 for 1-1/2 hours for a doctor's appointment and did not provide verification. On Monday, March 25 he had a doctor's, appointment and did not return *to* work resulting in an absence of 4-1/2 hours. On March 26 he was present at work and was requested to provide verification that he was unable to return to work after the appointment on March 25. He was absent all day on March 27. On March 28 he came to work and presented a physician's verification that said he was sick on March 22 but could return to work on March 28. On March 29 he was absent for 1-1/2 hours for a doctor's appointment. On Monday, April 1 he was absent all day. On April 2 he presented a verification which said he was under a doctor's care from March 25 to April 1 and could return to work on April 2. The District was confused because Mr. Petrich had been back to work on several occasions during the time period covered by the doctor's notes and Mr. Hodnett directed Mr. Petrich to correct the inconsistencies. Mr. Petrich did not supply any doctor's verification to correct the confusion nor did he bring in the requested verification to cover the 4-1/2 hours on March 25. The District docked him for this time.

The negotiated contract provides in section 19.0 of Article XIX on Disciplinary Action and Dismissal Procedures that the District may

dock pay for an absence without authority. According to the same section the "District may impose discipline or dismissal on permanent employees when the work performance or behavior of the employee is such that prior verbal and/or written warnings by the immediate supervisor have failed to result in a remediation of the unsatisfactory performance or behavior." Section 19.1 provides that a permanent employee has a right to request an the informal hearing with the immediate supervisor prior to disciplinary action.

These sections on discipline do not apply to the instant situation because Mr. Petrich's hours were not docked as a matter of discipline. Rather, they were docked because he failed to provide a physician's verification as allowed by the contract.

The foregoing facts do not indicate any irregularities in the District's procedure in docking Mr. Petrich's pay for March 25, 1985. For this reason this aspect of the charge will be dismissed.

14. On May 31, 1985, Mr. Petrich noted that his May pay warrant was docked 1-1/2 days' pay for April 22 and 23, 1985 although he had submitted a physician's certificate of illness. The District's files do not contain the April 25, 1985 verification which is attached to the first amended charge as exhibit 1. Absent this verification the District docked Mr. Petrich's pay in accordance with normal procedures.

Again, section 13.3.4 of the negotiated contract allows the District to require verification of sick leave absences and section 19.1 confers the right to request a hearing on a pay dock only when it is the result of disciplinary action. Mr. Petrich could have filed a grievance pursuant to Article XVIII of the negotiated contract entitled Grievance Procedures, although he did not.

No violation of the EERA exists here because the District conformed with the negotiated contract and established procedures. There may have been a mistake in that Mr. Petrich submitted and the District misfiled the verification, but in such case there is no showing of a policy change having a "generalized effect or continuing impact upon the terms and conditions of employment" as required by Grant Joint Union High School District, supra. Therefore this allegation of the first amended charge will be dismissed.

15. The allegation that the District proposed a 30-workday suspension against Mr. Petrich is the subject of case LA-CE-2143 previously filed end currently being processed. In order to avoid redundant litigation of the same issue this allegation must be dismissed.

19. The charge alleges that the District unilaterally changed Mr. Petrich's work hours effective June 21 through August 30, 1985 from 7:00 a.m. - 4:00 p.m. to 6:00 a.m. to 2:30 p.m. with a lunch hour of one-half hour instead of one hour. The District has records showing that the past practice for at least 20 years has been to change the summer hours of employees in this manner to accommodate the cooler morning hours and an earlier watering schedule. Section 10.6 of the negotiated contract provides that the length of the lunch period "shall be for a period no longer than one (1) hour nor less than one-half (1/2) hour". The District's action was consistent with this provision. Mr. Petrich has not supplied any facts showing that the past practice is otherwise. This allegation will be dismissed.

20. The charge alleges that the District changed the entire night shift of custodians, with the exception of two individuals, to the day shift and reduced their lunch hour from one hour to one-half hour. Again, the District's records indicate a consistent past practice of 20 years' duration of switching the night shift to the day shift during the summer holiday and shortening the lunch hour from one hour to one-half hour. Absent facts indicating a different past practice this allegation of the charge must be dismissed.

Opportunity to Amend

For the reasons stated above, the charge as presently written does not state a prima facie violation of the EERA. If you feel that there are facts or legal arguments which would require different conclusion, an amended charge should be prepared on a standard PERB unfair practice charge form clearly labeled First Amended Charge, should contain all the allegations you wish to make and be signed under penalty of perjury. The amended charge must be served on the respondent end the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you by August 26, 1985, I shall dismiss your charge. If you have any questions regarding how to proceed, please call me at (213) 736-3127.

Sincerely,

Barbara T. Stuart
Regional Attorney

Attachment

BTS:djm