

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



VICTOR VALLEY TEACHERS ASSOCIATION,)	
)	
Charging Party,)	Case No. LA-CE-266-77/78
)	LA-CE-386-78/79
v.)	
)	PERB Decision No. 148
VICTOR VALLEY JOINT UNION HIGH)	
SCHOOL DISTRICT,)	
)	December 11, 1980
Respondent.)	
)	

Appearances: Charles R. Gustafson, Attorney for Victor Valley Teachers Association; Steven J. Andelson, Attorney (Paterson & Taggart) for Victor Valley Joint Union High School District.

Before: Gluck, Chairperson; Moore, Member.

DECISION

The Victor Valley Teachers Association appeals the attached hearing officer's notice of dismissal of its unfair practice charges with prejudice and without leave to amend.

After considering the entire record in light of the appeal, the Board has decided to affirm the hearing officer's findings and conclusions and adopt his decision and order.

ORDER

Upon the foregoing decision and the entire record in this case, the Public Employment Relations Board ORDERS that:

The unfair practice charges LA-CE-266-77/78 and LA-CE-386-78/79 filed by the Victor Valley Teachers Association

against the Victor Valley Joint Union High School District are hereby DISMISSED with prejudice and without leave to amend.

PER CURIAM

PUBLIC EMPLOYMENT RELATIONS BOARD
OF THE STATE OF CALIFORNIA



VICTOR VALLEY TEACHERS)
ASSOCIATION,)
)
Charging Party,)
)
v.)
)
VICTOR VALLEY JOINT UNION HIGH)
SCHOOL DISTRICT,)
)
Respondent.)
)

Case Nos. LA-CE-266-77/78
LA-CE-386-78/79

NOTICE OF DISMISSAL
WITH PREJUDICE AND WITHOUT
LEAVE TO AMEND
(8/31/79)

NOTICE IS HEREBY GIVEN that the above-captioned unfair practice charges filed by the Victor Valley Teachers Association (Association) against the Victor Valley Joint Union High School District (District) are hereby dismissed with prejudice and without leave to amend for the following reasons:

PROCEDURAL HISTORY

Unfair Practice Charge LA-CE-266-77/78

On June 30, 1978 the Association filed unfair practice charge LA-CE-266-77/78 against the District alleging a violation of section 3543.5(a), (b) and (c).

On July 27, 1978 the District timely filed an Answer to unfair practice charge LA-CE-266-77/78.

An informal conference in the unfair practice charge LA-CE-266-77/78 held on July 28, 1978 resulted in a stipulation whereby the parties agreed that the matter should be held in abeyance without prejudice until either party notified the

Public Employment Relations Board (PERB) to set a formal hearing.

On October 17, 1978 the Association filed a Request for Hearing asking that said matter be set for formal hearing as soon as possible.

Unfair Practice Charge LA-CE-386-78/79

On October 17, 1978 the Association filed unfair practice charge LA-CE-386-78/79 against the District alleging violation of sections 3543, 3543.1(a), and 3543.5(a), (b), (c), (d) and (e).

On November 22, 1978 the District timely filed Answer to unfair practice charge denying generally and specifically that it had engaged in an unfair practice within the meaning of section 3543.5.

Unfair Practice Charge LA-CO-61-78/79

On September 29, 1978 the District filed unfair practice charge LA-CO-61-78/79 against the Association alleging violation of section 3543.6(c) and (d).

On November 3, 1978 the below-named hearing officer issued a Notice of Consolidation in Case Nos. LA-CE-386-78/79 and LA-CO-61-78/79.

On November 22, 1978 the Association timely filed Answer to unfair practice charge LA-CO-61-78/79 wherein the Association denied generally and specifically the allegations contained in the unfair practice charge.

On December 5, 1978 an informal conference in consolidated charges LA-CE-386-78/79 and LA-CO-61-78/79 was held in San Bernardino, California.

Pursuant to the informal conference on December 5, 1978, the District and the Association entered into a stipulation in Case Nos. LA-CE-266-77/78, LA-CE-386-78/79 and LA-CO-61-78/79.

DISCUSSION

At the informal conference in unfair practice charges LA-CE-386-78/79 and LA-CO-61-78/79 on December 5, 1978 the parties verbally entered into a stipulation which was memorialized by a letter from the below-named hearing officer to the parties dated December 5, 1978.

Pursuant to said agreement, the Association and the District agreed inter alia:

The above-referenced unfair practice charges [LA-CO-61-78/79, LA-CE-266-77/78 and LA-CE-386-78/79] shall be held in abeyance by the PERB and shall be withdrawn in writing by the District and the Association with prejudice when a final contract is agreed to by the Association and the District.

By letter dated June 13, 1979 from Mr. Kilgore, Director of Employer-Employee Relations for the District, PERB was advised that the District and the Association had successfully reached agreement through mediation and arrived at a contract operative through June 30, 1980. A copy of said agreement was enclosed which bears the signature of Ms. Jeannette Echols, president of the Association, and is dated June 12, 1979.

Having not received letters of withdrawal with prejudice from either the District or the Association, the below-named hearing officer wrote to representatives of the Association and the District on August 20, 1979 setting forth therein the history of the cases to that date, including conversations between the below-named hearing officer and Ms. Echols on June 19, 1979, June 22, 1979 as well as conversations between Assistant General Counsel Terry Filliman and Ms. Echols on June 29, 1979 and Assistant General Counsel Al Link and Ms. Echols.

The letter dated August 20, 1979 advised the parties to either withdraw unfair practice charges LA-CE-266-77/78, LA-CE-386-78/79 and LA-CO-61-78/79 or said unfair practice charges would be dismissed with prejudice pursuant to the parties stipulation of December 5, 1978.

By letter dated August 22, 1979, Ms. Echols wrote to the below-named hearing officer stating, inter alia:

In reference to correspondence dated August 20, 1979, all statements are true to June 29, 1979.

On August 24, 1979, the District requested withdrawal with prejudice of unfair practice charge LA-CO-61-78/78 and by letter dated August 24, 1979, unfair practice charge LA-CO-61-78/79 was withdrawn with prejudice and the PERB case file therein closed.

On August 28, 1979, Ms. Echols filed a mailgram which failed to withdraw unfair practice charges LA-CE-266-77/78 and LA-CE-386-78/79 and further stated that Ms. Echols did not have the authority to withdraw said unfair practice charges.

This Notice of Dismissal with Prejudice and Without Leave to Amend then resulted.

The stipulation between the parties to unfair practice charges LA-CE-266-77/78, LA-CE-386-78/79 and LA-CO-61-78/79 that the said unfair practice charges would be withdrawn with prejudice when a final contract is agreed to between the Association and the District is clear and unambiguous. That Ms. Echols agreed, on behalf of the Association, to withdraw unfair practice charges LA-CE-266-77/78 and LA-CE-386-78/79 is not disputed by her as evidenced by her letter dated August 22, 1979. Nevertheless, Ms. Echols has refused to comply with her earlier agreement and most recently contends in her mailgram filed August 28, 1979 that she does not have authority to withdraw said unfair practice charges.

An examination of unfair practice charges LA-CE-266-77/78 and LA-CE-386-78/79, however, indicates that Ms. Echols has authority to withdraw said unfair practice charges. Unfair practice charge LA-CE-266-77/78 indicates that the name and title of the agent to be contacted regarding said charge is none other than Ms. Jeannette Echols, president of the Association and is further signed by Ms. Echols as president of the Association. Unfair practice charge LA-CE-386-78/79

indicates that the name and title of the agent filing the charge is again Ms. Jeannette Echols as president of the Association. Since Ms. Echols is indicated on both charges as the person to contact and is indicated as the person who filed charge LA-CE-266-77/78, it is concluded Ms. Echols has complete authority to withdraw unfair practice charges LA-CE-266-77/78 and LA-CE-386-78/79 but has failed to do so.

The PERB's policy of encouraging parties to reach a voluntary settlement in unfair practice charges such as these is seriously undermined when a party refuses to honor an agreement to withdraw an unfair practice charge. Similar concerns have been expressed by the National Labor Relations Board (NLRB) when a party has attempted to withdraw from a settlement agreement to an unfair labor practice charge. In George Banta Co., Inc. and Graphic Arts Union (1978) 236 NLRB No. 224 LRRM 1581], wherein an employer attempted to withdraw from a settlement agreement after NLRB's delay in approving the settlement stipulation, the NLRB held:

Finally, policy considerations militate against granting respondents the right to withdraw from formal settlement stipulations executed with the General Counsel pending Board approval. Such a right would undermine the continued efficacy of the settlement process which, as an alternative to lengthy adjudication, allows the Board as well as respondents and charging parties to save time, expense, and the inevitable risk of litigation. In Johnson, supra, the Seventh Circuit alluded to such considerations which it found justified the refusal to permit a respondent to withdraw

from a consent order prior to FTC's final approval. A similar approach is warranted herein where the situation is basically analogous to that in Johnson (98 LRRM at p. 1584.)

Very similar policy considerations require dismissal with prejudice in the instant matter. Should the Association be allowed to refuse to honor its agreement to withdraw with prejudice the above-referenced unfair practice charges, particularly in light of the District's withdrawal with prejudice of unfair practice charge LA-CO-61-78/79, the integrity of the entire settlement procedures of the PERB would be clearly damaged irreparably.

For the above reasons, unfair practice charges LA-CE-266-77/78 and LA-CE-386-78/79 are hereby dismissed with prejudice and without leave to amend.

The Charging Party may obtain review of this dismissal by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (PERB Regulation 32630(b).) Such appeal must be actually received by the Executive Assistant to the Board before the close of business on September 20, 1979 in order to be timely filed. (PERB Regulation 32135.) Such appeal must be in writing, must be signed by the Charging Party or his agent, and must contain

the facts and arguments upon which the appeal is based. (PERB Regulation 32630(b).) The appeal must be accompanied by proof of service upon all parties. California Administrative Code, title 8, part III, sections 32135, 32142 and 32630(b), as amended.

Dated: August 31, 1979

WILLIAM P. SMITH
General Counsel

By
Kenneth A. Perea
Hearing Officer